



Award No. 18705
Docket No. CL-19038

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES**

THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6874) that:

1. The Carrier violated the established practice, understanding and provisions of the Clerks' Agreement, when it failed and refused to pay time slip claims filed in writing, which were not declined within the prescribed time limit Rules of Rule 4-D-1 of the Clerks' Agreement and also Article V, of the August 21, 1954, National Agreement.

2. That Clerk V. N. Rocca now be allowed payment for time slip claims submitted in writing, effective August 1, 1969, to October 2, 1969 and thereafter, and were never declined by the Carrier under the provisions of the established practice and understanding of time limit on claim Rules.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965 which includes a revised and amended Scope Rule effective April 1, 1964 which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, as amended, and also with the National Railroad Adjustment Board, covering clerical, other office station and storehouse employees, between this Carrier and this Brotherhood. The Rules Agreements will be considered a part of this statement of facts. Various Rules and Memorandums therefore shall be referred to from time to time without quoting in full.

This dispute involves the Carrier arbitrarily failing to deny this claim within the time limit specified, in accordance with Rule 4-D-1 of the Clerks' Agreement and Article V, of the National Agreement of August 21, 1954, and is payable in full accordance with these rules. Furthermore this dispute involves the Carrier arbitrarily and deliberately bringing in a field man, mechanic's helper (L. M. Gregory) under the Signalmen's Organization to perform the clerical duties of V. N. Rocca and other similar clerical duties in violation of the Clerks' Agreement, thereby depriving him of overtime and

Carrier's records do not disclose that the Employees submitted as "Ex Parte Statement of Facts" as required by Memorandum of Understanding No. 4.

On February 27, 1970, President Schlager advised the General Chairman that the appeal would be heard on March 11, 1970. The appeal was heard as scheduled and on March 17, 1970, President Schlager wrote the General Chairman denying the appeal. A copy of that letter is attached and identified as "Carrier's Exhibit No. 7."

Under date of September 25, 1970, C. L. Dennis, International President, wrote Your Board advising of his intent to submit this dispute to Your Board for adjudication. A copy of that letter is on file with Your Board.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 23, 1969 the Organization's local Chairman wrote to Carrier's Superintendent Maintenance of Way, enclosing copies of time slips which the local chairman alleged had been submitted to his supervisor by claimant. The slips covered forty three separate alleged violations of the Scope rule, the last of which had occurred more than 60 days prior to December 23, 1969.

Both parties claim violations, by the other, of Rule 4-D-1, which reads as follows:

"4-D-1 (a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

Claimant contends that Carrier failed to provide notification that the claim was disallowed, as provided by the Rule and that it must be allowed as presented. Carrier contends that the claim is stale, not having been presented within 60 days of the date of occurrence. Carrier bases this contention on the premise that the form used (Time Slip, G-9-A) is not the proper form and that as a matter of fact it was not received. On this latter point there is an irreconcilable conflict in the evidence.

The Board does not agree with Carrier's contention that the submission of Form G-9-A cannot constitute the submission of a claim. It is not the form used that is of importance. What is of importance is that Carrier is clearly advised that a claim has been made, and that Carrier is further advised of the nature of the claim so that it can respond. Of central importance, of course, is that Carrier's designated officer receive the claim.

Here, as noted, the evidence is in hopeless conflict on that point. It is not possible for this Board to resolve the conflict on this Record. Therefore, in the absence of a clear showing that the claims were received by Carrier they must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier did not violate the Agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 24th day of September 1971.