

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19480  
Docket Number CL-19467

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship  
(Clerks, Freight Handlers, Express and Station Employes  
(Lehigh Valley Railroad Company

**STATEMENT OF CLAIM:** Claim of the System Committee of the Brotherhood  
(GL-6985) that:

A. Carrier violated the Agreement between the parties when it failed to comply with Rule 33 in the handling of the claims of C. Swartwood; F. Baker; and A. Gasper; Clerks at Buffalo and Niagara Falls, New York; and,

B. Carrier shall now be required to allow the claims of C. Swartwood; F. Baker; and A. Gasper, as presented in writing October 14, 1968, i.e.,

(1) Claim on behalf of C. Swartwood, Clerk at Buffalo, for a day's pay at overtime rate, for Monday September 30 and Wednesday October 2, 1968, on account of D. Sikora, Officer Manager, in the Traffic Department, doing clerical work which comes under the Clerks' Agreement.

(2) Claim on behalf of F. Baker, Clerk, at Niagara Falls, for a day's pay at overtime rate, from September 5, 1968, and for each and every day thereafter until this situation is corrected, on account of the passing reports being transferred from the Yard Department at Niagara Falls to the Traffic Department at Buffalo.

(3) Claim on behalf of A. Gasper, Clerk at Buffalo, for a day's pay at overtime rate, from September 5, 1968, and for each and every day thereafter that this condition exists on account of the passing reports being transferred from the Yard Department at Buffalo to the Traffic Department.

**OPINION OF BOARD:** The claimants (C. Swartwood, F. Baker, and A. Gasper) are clerks holding seniority on the Group 1 Clerks' Roster, Buffalo District. Petitioner contends the Carrier should be required to pay their claims as initially presented by reason of its failure to comply with the time limits of Rule 33 of the Agreement.

FACTS OF RECORD

On October 14, 1968 the Organization filed claims on behalf of claimants, addressed to the Trainmaster of Carrier, Buffalo, New York.

On February 10, 1969 the Organization wrote the Trainmaster that since there had been no reply to the claims addressed to him, the Carrier had violated Rule 33, Time Limits.

In pertinent part Rule 33 reads as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employes involved, to the officer of the Carrier authorized to receive same, within sixty (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 sixty (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.

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose."

On April 1, 1969 the Organization wrote to Mr. M. W. Midgley, Carrier's Director of Labor Relations and Personnel, Bethlehem, Pa., stating that the Trainmaster had not responded to the initial claims, had not replied to the February 10, 1969 letter, and that Carrier had violated Rule 33, Time Limits.

Subsequently, on September 9, 14, 1970, the Director of Labor, Relations and Personnel wrote to the Organization stating that, since the disputed work was being performed in the Traffic Department, the claims should have been addressed to officials in that department. The communication also stated that

"... the next appeal made after filing claim with the Trainmaster, which as stated was not proper, was to this office; the next step in the appeal procedure would be to the Superintendent at Buffalo."

Also noted is Petitioner's statement that it is not pressing the merits of the claim herein.

#### RULINGS ON PETITIONER'S CONTENTIONS

Petitioner contends the Trainmaster was the proper officer with whom to file these claims and that his non-response to the claims violated the time limits of Rule 33. Carrier contends, on the other hand, that the Traffic Department was the proper place for filing the claims and that filing with the Trainmaster violated the Rule 33 requirement of filing with the authorized officer.

It will not be necessary to make a determination of these contentions, because another element in the case is controlling. Carrier asserted that the next level of appeal after the Trainmaster was to the Superintendent at Buffalo, but that the appeal was not filed with the Superintendent. Instead it was filed with The Director of Labor Relations and Personnel, Mr. Midgley, who was not the proper recipient of the appeal. These facts are not refuted by the Petitioner, and we therefore find that the Organization violated Rule 33 (b) by its failure to follow the prescribed appeal procedure.

In view of our finding on the appeal procedure, it is not necessary to determine the issue of whether the claims were initially filed with the proper officer. We shall dismiss the claim.

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**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 Employes involved in this dispute are respectively Carrier and Employes 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 claim be dismissed. .

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: E.A. Killen  
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1972.