

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19766
Docket Number SG-19392

Robert M. O'Brien, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
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(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: 1. Carrier failed to comply with the procedural requirements agreed upon by the parties with respect to application of the National Agreement dated August 21, 1954, when Supervisor C&S D. A. Walker failed to decline within 60 days from date claim was filed on behalf of Signal Maintainer Ralph Downour, and

2. Carrier shall now allow claim as presented; i.e.:

(a) Carrier failed to provide transportation to Signal Maintainer Ralph Downour either in the form of a track motor car or motor truck (highway vehicle) in accordance with Job Bulletin in which Mr. Downour bid on and was assigned to the job he held on October 1, 1969, and as the result of the failure of Carrier to provide the herein-referred-to transportation Mr. Downour was forced under such circumstance to use his private automobile when he was called to perform emergency service by the Carrier on date of October 1, 1969, and when returning from performing such emergency service which was at Stanley Yards in Toledo, Ohio, and when still on Carrier property sustained damages to his private automobile on this date, and

(b) Carrier be now required to reimburse Signal Maintainer Ralph Downour in the sum of \$215.78, such being the cost of damages to his private automobile for repair of same, account failure of Carrier to provide transportation as referred to in (a) above on October 1, 1969. (Carrier's File: m-1)

OPINION OF BOARD: On October 1, 1969 while on Carrier's property and in Carrier's employ, claimant sustained damage to his private automobile which he was required to use due to Carrier's failure to provide him with transportation. Claim was filed November 24, 1969 requesting Carrier to reimburse claimant for the cost of repairs to the automobile. It is the Organization's position that the claim must be allowed since Carrier's Supervisor failed to render a decision on the claim within the 60 day time period prescribed in Article V of the August 21, 1954 National Agreement.

We cannot agree with the Organization's contention. Before the time limits of Article V become applicable, the claim as presented must come within the term "claims or grievances" upon which Article V is premised. The claim requesting compensation for damage to claimant's automobile is in the nature of a tort and does not involve the working agreement between the parties.

The claim does not allege a rule violation nor does it involve the interpretation or application of the Schedule Agreement. The duly established grievance procedure on this property has thus been erroneously invoked by the Organization. The proper forum for adjudication of the within claim is a Court of Law and not the National Railroad Adjustment Board. Thus we are left no alternative other than to dismiss the claim.

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 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 25th day of May, 1973.