

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19799
Docket Number SG-19428

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Boston and Albany Railroad, now Penn Central Transportation Company, involving:

The claim * presented by General Chairman R. J. Tarte on November 5, 1969, to Signal Supervisor D. M. O'Brien, should be allowed, as presented, because said claim was not disallowed by Signal Supervisor D. M. O'Brien in accordance with provisions of Article V of the National Agreement dated August 21, 1954.

*The claim, as presented, read:

"Please consider this claim in behalf of Ldr. Signal Mtr. Tarte for all hours of overtime worked by other employees at Westboro Yard in connection with the East end Trk. #1 sw.

These signal employees Lane, Temasetti, etc. were used or called to open the above new sw. on evening Sat. & Sun. and Mr. Tarte on whose section the Sw. is in was not called.

You stated to me in front of the gang that you could care less about the call list and would not honor it. The above and this claim bears this out, however I ask that you review your position by paying this claim and agreeing to in the future honor the call list and so instruct your aides."

(Carrier's File: 11587-NH)

OPINION OF BOARD: Our sole consideration in this dispute concerns procedural issues, and the merits of the claim are not decided in favor of or against the Petitioning Organization.

Petitioner contends that the claim must be paid as presented to Carrier because the Supervisor C&S did not disallow the claim within 60 days in accordance with the provisions of Article V, Sec. 1 (a) of the August 21, 1954 National Agreement. In its submission the Carrier asserts that the claim was initially invalid because it did not provide the date or dates of the alleged violation and, therefore, the fact that the Supervisor C&S did not disallow the claim was of no consequence.

The record makes it clear that the claim was not disallowed within the 60 day period. Thus the question is whether a statement of claim which is adequate in substantive form, except for the omission of the date of alleged violation, will cause the running of the 60 day period under the time limits provisions.

The claim, as presented in a letter dated November 5, 1969, reads as follows:

"Please consider this claim in behalf of Ldr. Signal Mtr. Tarte for all hours of overtime worked by other employes at Westboro Yard in connection with the East end Trk.#1 sw..

These signal employes Lane, Tomasetti, etc. were used or called to open the above new sw. on evening Sat. & Sun. and Mr. Tarte on whose section the Sw. is in was not called.

You stated to me in front of the gang that you could care less about the call list and would not honor it. The above and this claim bears this out, however I ask that you review your position by paying this claim and agreeing to in the future honor the call list and so instruct your aides."

Under date of November 14, 1969, the Supervisor C&S responded to the above letter as follows:

"In answer to your letter of November 5, 1969, will you give me something in writing stating more definite times, dates, places, names and Rules violated, so that I can process this claim." (Emphasis supplied)

The above letter of Supervisor C&S was answered by the Organization in a November 15, 1969 letter which did not provide a date or dates of the alleged violation, but which stated that dates could be provided if the Carrier would authorize examination of payroll and time reports. The letter also gave a specific rule as having been violated. There was no further correspondence between the parties until the Organization wrote the Supervisor C&S on January 19, 1970 demanding payment of claim on grounds of violation of time limits. The Supervisor did not respond and the Organization renewed its time limits demand in a February 19, 1970 letter to the next highest officer, Carrier's Regional Engineer C&S. In an April 16, 1970 letter, the Regional Engineer C&S, in pertinent part, said:

"Referring to the instant claim, a review of the file indicates that Mr. O'Brien did write under date of November 14, 1969 indicating that your claim of November 5, 1969 did not have adequate basis to be entertained. I would gather from reading

"that letter of November 14th that although it did not so specifically state, that until proper information were furnished the claim could be entertained and in essence, was denied.

Since the necessary information to entertain a claim has not as yet been presented, there can be no violation of Article V of the August, 1954 Agreement. On this basis, your claim, and/or request of February 19, 1970 to Mr. R. L. Straw, is hereby further denied." (Emphasis supplied)

When the claim reached Carrier's highest appeals officer, the Superintendent, Labor Relations & Personnel, he took the position in a June 17, 1970 letter that:

"....The original claim submitted did not present the date or dates involved in the claim and I, therefore, hold the view that the Carrier is not in violation of the time limit rule because of the inadequate information contained in your claim...."

In light of the foregoing facts, and the record as a whole, we conclude that, insofar as the time limit provisions are concerned, the claim was a bona fide claim and that lack of a date did not render the claim so defective as to relieve the Carrier of the 60 day time limit provisions. In reaching this conclusion we have considered it of substantial importance that, at both the first and second levels of handling, the claim was procedurally treated as bona fide by the Carrier. At the first level, the Supervisor C&S asked for more information "so that I can process this claim." At the second level, and after the Organization had given notice that the claim had not been disallowed within the time limits, the Regional Engineer C&S again treated the claim as procedurally bona fide by asserting that it had been previously denied and by making a further denial of the claim. These denials came in the Regional Engineer's letter of April 16, 1970, in which he said: "...I would gather from reading that letter of November 14 that although it did not so specifically state, that until proper information were furnished the claim could be entertained and in essence, was denied...Your claim, and/or request... is hereby further denied."

While these admissions of the bona fideness of the claim are of substantial import, as previously indicated, we have also carefully considered Carrier's ultimate position that the lack of a date made the claim so defective as to render inconsequential its failure to deny within the time limits. Though it is better and common practice to include dates in the presentation of claims, we find no requirement for a date in the applicable provisions on time limits for presenting and progressing claims or grievances. Article V, Section 1 (a) of the August 21, 1954 National Agreement. The only reference to a date in these provisions is that the claim must be presented "within 60 days from the date of the occurrence on which the claim or grievance is based." This language

serves as a procedural bar to any claim filed beyond 60 days after such occurrence. The procedural bar, if in fact applicable, would be operative where a date is omitted as well as where a date is included in the claim. But we find nothing in the language providing the procedural bar that expressly or impliedly requires the date of occurrence to be included in the claim. Thus, we find no basis for concurring with Carrier's contention that the lack of a date prevented the running of the 60 day period under the time limit provisions.

The numerous Awards cited by the parties have been helpful in our study of this dispute; however, because of their dissimilar facts, discussion of these Awards is not warranted.

For the foregoing reasons we find that Carrier violated the time limits provisions and, accordingly, we shall sustain 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 time limit provisions were violated.

A W A R D

Claim sustained on time limits.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June 1973.