NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20373
Docket Number CL-20097

Irving T. Bergman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees
(The Western Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7232) that:

1. Carrier violated the rules of the Agreement extant between the parties when it permitted and/or required a clerk from Seniority District No. 12 to perform clerical work assigned to Seniority District No. 18.

2. Carrier violated the August 21, 1954, National Agreement, Article V, 1(a).

3. Mr. George Wigley shall be allowed eight hours' pay at the overtime rate for August 4, 5, and 6, 1971.

OPINION OF BOARD: This claim is based upon the alleged violation of Agreement when the Carrier failed to call claimant for extra work in August 1971. Procedural objections have been made by both parties involving, among others, whether or not the claim was made in the first instance as provided by Article V, August 21, 1954, National Agreement, Carrier's Exhibit "D".

It is not disputed that claims must be initiated as set forth in Article V, Section 1(a) of the August 21, 1954 National Agreement which states: "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." By letter dated September 8, 1970, Carrier's Exhibit "H", the General Chairman BRAC was notified that effective September 1, 1970, "all time claims or grievances" should be addressed to the General Superintendent of Transportation, 1025-19th Street, Sacramento, California." The first writing addressed to a Superintendent at the address given in the letter of September 8, 1970, with reference to this claim, is dated October 31, 1971, Employes' Exhibit "C". This date is more than 60 days from the date of the occurrence on which the grievance is based.

The choice of words in correspondence from the Carrier such as "claim" and "appeal" do not constitute an agreement to waive the requirement that the claim must be presented in writing to the Carrier's officer who is authorized to receive it, prior Third Division Awards 18553, 19070, 19147, 19663. The claim filed late with the officer designated by the Carrier, must be dismissed under the circumstances of this case.

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: A. W. Paulus
Executive Secretary

Dated at Chicago, Illinois, this 6th day of September 1974.

LABOR MEMBER'S DISSENT TO AWARD 20373
(DOCKET CL-20097)
(Referee Bergman)

Referee Bergman's Award in this dispute is patently erroneous, because of the following facts of Record which Referee Bergman chose to convert to an argument on the mere "choice of words."

Claimant presented three (3) separate "Statement of Overtime Claim," on three (3) separate Carrier Forms #139 Rev., which Carrier requires its employes to utilize in presenting claims for overtime. Claimant executed Form #139 Rev. and fully explained thereon his reason for submitting such claims, and noted on each of these three Claims that Agreement Rules 20, 28 and 38 had been violated by Carrier's having utilized an employe across seniority district lines to perform work which he (Claimant) was rightfully entitled to perform under the Agreement, in accordance with his seniority within the Seniority District in which the work was performed.

Carrier made an eleventh-hour assertion that these three claims were not "claims" contemplated by the provisions of Article V, Time Limits, of the August 21, 1954 Agreement; yet, almost in the same breath, Carrier presented its Exhibit "B," purporting to represent its letter of August 9, 1971, written to Claimant, in which we note Claimant's "claims" were acknowledged and his "claims" were denied. Upon appeal to Superintendent Western Division, reply thereto again recognized Claimant's "claims" but declination was made based on the allegation that: "This claim was not appealed within 60 days as provided by Article V * * ." Final appeal and conference brought written

response from the Carrier Officer, i.e., "In conference * * we discussed the instant claim * * *."; " * * * there is no basis for the instant claim."; " * * the instant claim was timely denied." and " * * the instant claim is denied." (underscoring supplied)

Thus, there was absolutely no dispute between the parties in their handling of the dispute on the property that the "Statement of Overtime Claim" forms executed by the Claimant were, IN FACT, CLAIMS. However, when response to these claims was not timely made, Carrier Member before the Board then took the position that they were not claims to which a response in writing had to be made. But, it is noted that the Carrier itself failed to argue that issue in handling on the property; instead, Claimant was presented with a letter supposedly written to him on August 9, 1971 which Claimant avers he did not receive until a copy of it was handed to him by Chief Clerk Timekeeping on October 11 when he (Claimant) inquired of the Chief Clerk whether or not his claims were to be honored because of a Time Limit violation.

At this point, Carrier was put on notice that Claimant contended he had not timely received a declination of his overtime claims. To fulfill its obligation under the Agreement, Carrier thus had the burden of proving that the controversial letter of August 9, 1971 was, in fact, timely delivered to Claimant. The so-called "proof" submitted by Carrier was a "TO WHOM IT MAY CONCERN" over the signature of the Chief Clerk Timekeeping (Carrier's Exhibit "G"), dated January 18, 1973. This--in addition to being self-serving--was inadmissible since it post-dated the Employes' Notice of Intent to the Board, dated September 6, 1972.

Carrier further asserted in its submission to the Board that the Timekeeper's letter of August 9, 1971 to Claimant was handled in the "usual manner" by placing it in the mailroom for delivery to the Claimant, the mailroom being located about 50 feet from Claimant's desk, and that it must be reasonably assumed that the letter was delivered in the usual manner. But, the Record conclusively established that placing correspondence pertaining to claims and grievances in the Carrier's mailroom for delivery was not the agreed-to "usual manner" of handling such matters; that, rather, the usual manner of handling such matters was by United States Mail.

To dismiss this claim in light of the above undisputed facts of Record is both inexcusable and palpably erroneous, for which we register vigorous dissent.

J. C. Fletcher
9-18-74