

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20519

Docket Number CL-20431

David P. Twomey, Referee

(Brotherhood of Railway, Airline & Steamship
(Clerks, Freight Handlers, Express and
(Station Employees
((formerly Transportation-Communication, Division, BRAC)

PARTIES TO DISPUTE:

(
(Norfolk and Western Railway Company
((Lake Region)

STATEMENT OF CLAIM: Claim of the General Committee of the T-C Division,
BRAC, on the Norfolk and Western Railway (Lake Region),
(GL-7374), that:

1. Carrier wrongfully assessed R. L. Brown 30 days suspension and disqualified him from Agent's position at Bellevue, Ohio, as a result of hearing held September 16, 1970.

2. Carrier shall be required to reinstate R. L. Brown to the Agent's position at Bellevue, Ohio, and compensate him for each day of the 30 day suspension at the daily rate of the Agent's position at Bellevue, Ohio, and for the difference in his earnings received from other positions and the earnings of the Agent's position at Bellevue, Ohio, for each day until the violation is corrected, under Rule 17, 31 and related rules of the agreement.

OPINION OF BOARD: The Organization contends that the Carrier violated the time limit provisions of the parties' Agreement and therefore the claim should be allowed as presented. The Carrier contends that the claim should be barred under provisions of Rule 31(c), because procedural requirements were not observed by the Organization in as much as the claim (appeal) was not presented to the proper Carrier officer. Additionally, the Carrier denies that it has violated the time limit rule.

On July 31, 1969, Carrier's Manager of Labor Relations wrote the Organization's General Chairman:

"While I cannot agree that it is a practice for the general chairman to initiate claims with the Superintendent, I will reiterate the procedure to be followed in the handling and progression of claims and grievances arising under your basic working agreement.

"1. All initial claims should be filed with the Chief Train Dispatcher regardless whether initiated by the individual employee, local chairman or general chairman.

- "2. First appeal of Chief Train Dispatcher's decision should be made to the Division or Terminal Superintendent as the case might be.
- "3. Final appeal of claim to be made to Manager Labor Relations, Cleveland, Ohio.

"The only exceptions to the above would be those claims or grievances arising in 'CH' Office, Cleveland, Ohio or 'GO' Office, St. Louis. In those instances the initial claim or grievance should be filed direct to the Regional Engineer Signals and communications who supervises the office and first appeal should be made to the proper Superintendent with final appeal to the Manager Labor Relations, Cleveland, Ohio."

(Employees' ex parte submission, Exhibit D.) The above quoted procedure outlined in the Manager of Labor Relations letter was literally followed in this case. The language of the letter is explicit in that the procedures were for all claims, the exceptions not being applicable to the present case. The Carrier has not demonstrated with probative evidence that the procedures outlined in the Manager of Labor Relations letter were retracted or changed in any manner. Indeed the Carrier's Chief Dispatcher, who first considered the claim and the Carrier's Superintendent who first handled the appeal, dealt with the matter on its merits and neither of these officers of the Carrier objected that the claim processing procedure was incorrect. Thus we reject the Carrier's contention that the claim should be barred under Rule 31(c) for not presenting it to the proper Carrier officer.

The correspondence, BRAC Exhibit C, pages 2, 3, 4, 5 and 6 clearly demonstrates that the Chief Train Dispatcher did not timely deny the claim when it was properly before him. Carrier has the positive requirement to act. Carrier must timely deny and notify the claimant within the time limit of Rule 32, or the claim must be allowed as presented. See Awards 18002 (Dugan), 19799 (Blackwell), 19782 (Roadley), and 19422 (Edgett). 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;

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

That the time limit provision was violated.

A W A R D

Claim sustained on time limit.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulson
Executive Secretary

Dated at Chicago, Illinois, this 8th day of November 1974.