

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20977
Docket Number CL-20918

Louis Norris, Referee

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

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7696) that:

1. Mr. French declined overtime pay to K. E. Graham. Mr. Graham claimed forty (40) minutes overtime per day for fourteen (14) days starting March 11, 1973.
2. The Carrier now pay Mr. Graham forty (40) minutes overtime, or the equal amount of overtime paid daily to Chief Yard Clerk G. C. Powers, on a daily and continuous basis. This overtime to be paid to K. E. Graham for each and every day following March 11, 1973 worked by him as a part of Relief Number 1, two (2) days of which are as Chief Yard Clerk on each Sunday and Monday.

OPINION OF BOARD: On the dates covered by this claim Chief Yard Clerk Powers was the incumbent of this position at a daily rate of \$41.50, with rest days of Sunday and Monday. Claimant relieved this position on said rest days and was compensated at the same daily rate. These facts are not in dispute.

Additionally, Carrier asserts that it was Powers practice to come in early and stay late in connection with his duties and responsibilities, and that he received problem telephone calls at home. To compensate Powers for such overtime, he was authorized to claim an additional 40 minutes overtime pay for each day starting March 6, 1973, and was in fact so paid for such overtime.

Petitioner contends, however, that Powers was paid the 40 minutes overtime regardless of whether or not he actually worked overtime or was actually on the property during such additional time. Further, that he was so paid while on vacation. Accordingly, it is asserted, such additional compensation was not "overtime pay" but became part of his regular rate of pay, and that Claimant was entitled to similar "additional compensation" on the rest days when he relieved Powers. Failure by Carrier to do so, it is claimed, violated Rule 50 of the Agreement and entitled Claimant to the relief demanded in the Statement of Claim.

We are faced at the outset with Carrier's procedural objections that the claim was not timely or properly filed; that such objections, if sustained, bars the Board from consideration of the merits of this dispute.

Petitioner responds by asserting that the time slips filed by Claimant with the Freight Agent constituted "proper claims" and that these were timely filed. Further, that the Organization letter of appeal, dated May 29, 1973, was filed well within the required 60 day period from the date of rejection of the claim (time slips) by the Agent.

In response, Carrier urges the further procedural objection that the claim was not filed with the Terminal Trainmaster, who was the proper Carrier Officer designated for such purpose by Carrier letter of March 8, 1968. Petitioner does not dispute such designation but contends that since this issue was not raised initially on the property it was not timely raised and should not be considered by the Board.

We consider the procedural objections raised by Carrier to be basic in nature, impacting directly upon the jurisdictional authority of the Board under the pertinent provisions of the Railway Labor Act. In the latter context, we have held repeatedly that a claim not filed with Carrier within applicable time limits is barred and deprives this Board of jurisdiction to consider the dispute on its merits.

See Awards 15386 (Dorsey), 15625 (McGovern), 16697 (Devine), 19563 (Ritter), 20098 (Sickles), 20170 (Blackwell) and 20666 (Edgett), among many others.

Applying the latter principle to the confronting facts, formal claim was filed by Petitioner by "appeal" letter of May 29, 1973, based on alleged violations commencing March 11, 1973. Obviously, such claim was not filed within the required 60 day period provided in Supplement D, subdivision 2, of the Agreement effective November 1, 1953. Nor, can we conclude that the time slips filed by Claimant constituted proper claims. Initially, these time slips were claims for "overtime". However, Petitioner's claim is not for overtime but for claimed violation of Rule 50 relating to the rating of "positions not employees". Consequently, these time slips did not in fact state the claim which was pressed by Organization on the property, and pressed now before the Board.

Additionally, we have held repeatedly in many prior awards that time slips are not considered "claims or grievances" as contemplated by Article V of the August 21, 1954 National Agreement or as provided in the Agreement between the principals.

See Awards 14083 (Hall), 18048 (Ritter), 18359 (Dugan), 19074 (O'Brien) and 20282 (Lieberman), among others.

Moreover, assuming arguendo that the time slips constituted proper claims, the further objection is raised that such claims were not presented to the Carrier officer designated for such purpose and as specifically provided in Supplement D, subdivision 1(a) of the Agreement. The record conclusively establishes that the claims (time slips) were filed with the Freight Agent and not with the Terminal Trainmaster. This did not constitute proper filing.

In these circumstances, we have held in innumerable prior Awards that such improper filing is jurisdictionally defective. Thus, in Award 15334 (House) we said:

"There can be no dispute that by application of Article V, 1(a) a claim, as the instant one, is barred if the same had not been presented in writing to the proper officer of the Carrier and such objection is timely raised during the handling on the property.

"Upon the record before us we find no evidence that Petitioner presented claim initially to the proper officer of Carrier and in the absence of such proof the claim is barred. We are compelled to dismiss the claim."

To the same effect, see Awards 12490 (Ives), 18371 (Criswell), 18553 (Rimer), 19070 (Dorsey) and 20063 (Blackwell), among others.

In the latter context, we cannot sustain Petitioner's contention that such objection by Carrier was not timely raised on the property. True, it was not initially raised, but it was in fact raised during the handling of this dispute on the property. Such procedure by Carrier has been ruled proper and timely.

See National Disputes Committee, Decision 5, dated March 17, 1965, as well as the following confirmatory Awards: 14355 (Ives), 14608 (Dolnick), 15798 (House), and 20123 (Blackwell), among a host of others.

Petitioner cites two prior Awards on the issue of "timely filing", 15408 (Lynch) and 15723 (Miller), neither of which are germane to the facts and principles here involved. In 15408, the sole issue was Carrier's failure to properly reject the claim. In 15723, the major issue was Carrier's failure to timely deny the claim, a period of more than four and one-half months having elapsed. This is not the situation here.

Nor are we persuaded that the failure of the Agent to properly advise Claimant is of any relevancy. He is not obligated to do so and there is no Rule in the Agreement to that effect. Moreover, it is Petitioner's, and Claimant's, responsibility to be aware of the filing requirements contained in the Agreement. This burden, if burden it is, cannot be shifted to Carrier. To hold otherwise would, in effect, be rewriting the Agreement as negotiated between the principals. Prior Awards are legion that this Board has no such authority.

We conclude, as established by the above findings, that the claim (whether by time slips or appeal letter) was not properly or timely filed, and that in view of the procedural objections raised by Carrier this Board is without jurisdiction.

Accordingly, based on the record before us and controlling authority, we are compelled 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 is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1976.