

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23511  
Docket Number MW-23400

George S. Roukis, Referee

PARTIES TO DISPUTE: { Brotherhood of Maintenance of Way Employes  
{ Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that:

(1) The claim\* as presented by Paul D. Faubion on January 16, 1979 to Assistant Division Manager V. L. Stoner shall be allowed as presented because said claim was not disallowed by Assistant Division Manager V. L. Stoner in accordance with Rule 47(a) (System File C#10/B-25268).

\*The letter of claim will be reproduced within our initial submission."

OPINION OF BOARD: The pivotal question in this dispute is whether Claimant's letter of January 16, 1979 constituted a claim under Rule 47(a) of the controlling agreement. Claimant contends that it was a claim, since he was required to assume travel, lodging and extra expenses because of Carrier's failure to honor the April 4, 1977 protective agreement, while Carrier contends that it was not a claim since it was untimely filed, vague and unspecific and the extension of a grievance that had been resolved.

The January 16, 1979 letter is referenced as follows:

"1/16/79

Mr. V. L. Stoner, Asst. Division Manager  
1900 N. Central Ave.  
Chicago, Il. 60639

Dear Mr. Stoner:

Because the Carrier has not honored the Polo-Culver Contract, regarding the employee moving expenses, I have had to assume payment of travel, lodging, and extra food expense over the past 7 months, while working at Excelsier Springs, 85 miles from my Chillicothe residence. During this time I have repeatedly written and phoned, asking that arrangements be made as covered by the Polo-Culver Agreement, for moving my residence to Excelsier Springs.

"I hope you will agree that this situation is unreasonable, and, I ask now to be reimbursed for these 7 months away from home expenses, in the amount of \$2,616.50. An itemized statement of these expenses is enclosed. Further, I ask that a definite arrangement regarding my future status be made immediately. I ask that either, (1) Arrangements be made for moving my residence to Excelsier Springs, or (2) That monthly reimbursement be made for these away from-home expenses.

Respectfully Yours,

/s/ Paul D. Faubion

Copy to: R. W. Mobry, C.M.ST. P.P.  
System Fed.  
925 Upper Midwest Bldg.  
Minneapolis, MN. 55401"

In our review of this case, we concur with Claimant's position. We have carefully considered Carrier's averments that the January 16, 1979 letter was not perceived as a claim since it was vague and imprecise, but we find that the letter contained sufficient specificity to constitute a claim, particularly, the first sentence of paragraph two, which requested an aggregate dollar amount of relief. It was premised upon Carrier's alleged failure to comply with the 1977 Polo-Culver Protective Agreement and reflected a distinct cause-effect relationship. Whether it was a meritorious or justifiable claim is not at issue here. Rule 47(a) which is applicable to this dispute permits an employee to file a claim with the Carrier officer, authorized to receive same, within 60 days of the occurrence on which the claim or grievance is based. It does not prescribe a claim format or require that certain information be provided as a precondition of validation. The aforementioned letter was not written in a generalized or conditioned language, but written in straightforward language which linked Carrier's failure to apply the April 4, 1977 Protective Agreement to Claimant's out of pocket expenses. Moreover, when the history of his request for protective status is studiously assessed, his letter of January 16, 1979 marks a distinguishable break from his traditional mode of inquiry. He is now asking for a specific dollar amount of incurred expense reimbursement for Carrier's presumptive failure to apply the April 4, 1977 Protective Agreement. He was entitled to a response, pursuant to the clear language of Rule 47(a) within the specified 60 day period. If the claim were frivolous or indefensible, Carrier could deny it on procedural or substantive grounds, but it was obligated to answer claimant's letter. Admittedly, V. L. Stoner's January 8, 1979 letter to General Chairman Mobry indicates that he was granted protective status, but this does not moot the claim or preclude Claimant from filing a petition. As an employee, who submitted a claim on his behalf, he provided sufficient information in his January 16, 1979 letter to permit Carrier the opportunity to act upon it.

In Third Division Award 10500, which conceptually supports this case, we stated in pertinent part that:

"Carrier failed to give written notice, within sixty days, of the reasons for disallowance of claims filed December 5, 1955. It would appear from the reading of the claims, on their face, they are valid ones. Had the Carrier desired to controvert the facts involved in the dispute or attacked the validity of the claims it would have been a simple matter for it to have done so by denying or disallowing the claims in writing within a period of sixty days. This procedural section is mandatory rather than directive in that a definite penalty is provided therein for failure to write disallowance of claim within sixty days - the claim to be allowed as presented."

In the instant case, we find that Claimant's January 16, 1979 letter constituted a claim under Rule 47(a) and Carrier was obligated to disallow it within the required time period.

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 Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST:



Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1982.