

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25091
Docket Number MW-24153

Herbert Fishgold, Referee

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes
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(Duluth, Winnipeg and Pacific Railway Company

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

(1) The claim* as presented by the General Chairman on May 22, 1980 to Roadmaster R. Soger shall be allowed as presented because the claim was not disallowed by General Manager J. F. Corcoran (appealed to him in a letter dated August 19, 1980) in accordance with Sections (a) and (c) of Rule 21.

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

OPINION OF BOARD: This dispute concerns the abolishment of the Britt Section without advance notice to the Petitioner.

As a threshold matter, Petitioner raises a procedural issue, which was part of the Claim submitted to this Board (supra). The Organization argues that the authorized officer of the Carrier failed to timely respond in Step III of Grievance procedure in violation of Rule 21 of the Agreement derived from the 1954 National Agreement, provides as follows:

Rule 21.

"(a) All claims or grievances must be presented in writing by or on behalf of the employees involved, to the Officer of the Carrier authorized to receive same, within sixty (60) days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed the Carrier shall, within sixty (60) days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within sixty (60) days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the employees as to other similar claims or grievances. It is understood, however, that the parties may, by agreement at any stage of the handling of the claim or grievance on the property, extend the sixty (60) day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(c) The requirements outlined in Clauses (a) and (b), pertaining to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding Officer, except in cases of appeal from the decision of the highest Officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated Officer shall be barred unless within nine (9) months from the date of said Officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the nine (9) months' period herein referred to." (Emphasis added)

The record indicates that the Claim herein was presented to the Roadmaster on May 22, 1980 and denied by the Roadmaster on June 11, 1980. It was progressed to the Chief Engineer on June 26, 1980 and finally on August 19, 1980 the Step III appeal was made to the General Manager. The Carrier's response at Step III was from R. A. Olson, Labor Relations and Personnel Officer. By letter dated May 15, 1981, the Organization wrote to the General Manager specifying that there had been a default by Carrier in that Mr. Olson had responded to the Step III appeal rather than the General Manager, Carrier's highest appeal officer.

The Organization argues that since Mr. Olson was not the authorized officer to receive the final appeal, his response was clearly invalid and a violation of Rule 21. The Organization maintains that the responsibility for disallowing claims appealed to the third step is coexistent with the authority to receive appeals at that step.

Carrier insists that its handling of the Claim was proper and that Mr. Olson answered the Claim within the time limits on authority vested in him by the General Manager. It pointed out that the language of Rule 21 provides only that the Carrier shall notify whoever filed the claim of its disallowance, rather than specifying that a particular officer of Carrier be designated for this purpose.

This issue - the question of the authorized Carrier officer to receive and respond to claims on this property - was resolved by the Third Division Award No. 23943 (Lieberman), wherein it was determined:

"All the authorities cited by the parties have been reviewed and it is clear that the great weight of authority in closely related circumstances supports the Organization's position. Those awards hold that the officer of the Carrier who had been previously designated as the individual to receive claims or appeals must be the officer who responds to such claims or appeals. For example, this Board in Award 22710 stated:

'We have reviewed the authority submitted by the parties. The great weight of authority supports the position of the Organization that the Carrier committed a procedural error when an official other than the one designated to receive and process the claims responded to the claims.'

It must be concluded, therefore, that the Carrier erred in permitting Mr. Olson to respond to the Step III appeal rather than the General Manager to who they had been addressed. Particularly in the light of Mr. Olson's own instructions contained in the letter of January 21, 1980, it is apparent that the Carrier violated the Agreement. Under these circumstances, we cannot reach the merits in this dispute."

Continuity in the interpretation of contract rules is highly desirable, and such interpretations should not be overruled without strong and compelling reasons. There is nothing presented in the consideration of the instant decision which in any meaningful way can serve to distinguish the rationale of the decision in this dispute from that in Award 23943 since it involves interpretation of contract language. The parties are the same, the agreement is the same, and the facts are virtually identical. Accordingly, we conclude that the opinion reached in Award 23943 is hereby confirmed.

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:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1984.