

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25245
Docket Number CL-25237

Marty E. Zusman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Bessemer and Lake Erie Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-9779)
that:

1. Carrier violated the effective Clerks' Agreement when its officers who were authorized to receive time claims and grievances failed to respond within the time limits set forth therein;

2. Carrier shall now compensate the following named employees all time worked on an overtime basis by junior employees on February 6, 1982: K. L. Worley, C. M. Fisher, V. D. Chaney, C. L. Kline, C. E. Bennett, F. L. Worley and L. S. Campbell.

OPINION OF BOARD: Claim before the Board centers on "Statement of Claim" forms filed by seven employees with Carrier, wherein, employees argued that they were not called for overtime in compliance with the Agreement on Saturday, February 6, 1982. In said forms they alleged Carrier called junior employees in violation of the Agreement in force.

A thorough review of the case at bar indicates that on the following Monday, February 8, 1982, each of the seven employees filed with Carrier Officers, a clearly marked "Statement of Claim" form. That form was a BRAC form which included all of the relevant requirements for constituting a claim. It specified where and when a specific Agreement violation occurred, the Claimant and the requested remedy. In addition, these seven claim forms were presented to three different Carrier Officers and it is not disputed by the Organization or Carrier that they were the appropriate designated Carrier Officers to receive said claims. The internal BRAC forms however, were also clearly marked in pertinent part as follows:

"Protective Committee Lodge No. 989:

Please accept this as my claim for (State below what is being claimed)

and my request that you handle to a conclusion."

Carrier Officers designated to receive said claims did not respond in the required time limits of Rule 21. However, Assistant Manager Accounting, E. D. Marshall, a Carrier Officer designated to hear appeals responded to each employee denying the claim on April 1, 1982. While this was within the time limits, the Organization contended that Marshall was the inappropriate Carrier official, designated to respond, and that he abrogated the grievance procedure by removing himself from the appeal process. On April 21, 1982, the Local Chairman requested that the claims be accepted as valid without regards to the merits of the case because they had not been handled within the time limits by the appropriate Carrier official. The Carrier then argued in part that said forms were not appropriate claims and as such, it now being beyond the time limits for submitting claims in the alleged incident, that claims would no longer be accepted. The Rule at the core of the dispute is Rule 21 which reads in pertinent part:

***TIME LIMIT ON CLAIMS**

Rule 21(a). All claims or grievances shall be handled as follows:

(1). All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the company authorized to receive same, within 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 company shall, within 60 days from the date case 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 company as to other or similar claims or grievances."

The record before the Board includes additional issues, but central to a resolution of the instant case on time limits is the claim form used by the employees. The Organization has provided and pursued the logical argument that the forms included all the essential elements of a claim, were provided directly by the employee in compliance with the controlling Agreement to the appropriate Carrier Officer(s) designated to receive said claim and therefore complied with the controlling Rule of the Agreement. In addition, that even if said forms were inappropriate and to be disallowed by Carrier, it was the responsibility of the Carrier official designated to receive said claims to notify the employee in writing within sixty (60) days.

This Board firmly holds that while such arguments are persuasive, the facts in the instant case negate this logical argumentation by past practice as discussed in the record of the case on property and by the lack of clarity of the claim itself. Nowhere in the record does the Organization refute the position of Carrier that this is not the usual practice on this property by custom or tradition. In fact, the form in contention was addressed to the Protective Committee and stated: "Please accept this as my claim for ... and my request that you handle to a conclusion" (emphasis added). The Organization did not dispute on property that the form had never been used before in the manner now here for consideration. In the mind of this Board, Carrier official designated to receive claims and having been personally handed such forms were aware that claims were being filed. However, this Board firmly holds that they could not have explicitly known that what they had received was the claim being filed with Carrier as it was clearly, unequivocally and undeniably addressed to the Protective Committee. It was not mailed as a copy or with any other letter of request. As such, a nonresponse by designated officials was appropriate as they awaited a letter addressing a claim to an Officer of the Carrier. A response by Assistant Manager Accounting was inappropriate and not controlling in the instant case.

After a thorough and complete review of the very convincing documentation and argumentation provided by the Organization, this Board rules that if it was the purpose of the employe to engage the Carrier in said claim, that employe had to do so with direct clarity and not to place on the Carrier the burden of guessing the true intent of this ambiguous action. This Board is certainly mindful that a claim need not follow any exact form, but it absolutely must put the Carrier on notice that it has been served a claim. Such notice must be explicitly clear and as such was not the fact in the case at bar, Carrier action cannot be considered in violation of the Agreement. A claim must have clarity as a claim for Carrier to be contractually obligated to respond. Only when this Board can obviously conclude that Carrier has received a claim, can it rule that a claim has been served which, without exception, must be timely declined or sustained by a failure to respond. As no clear claim was ever presented to Carrier, no Carrier violation occurred.

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 is barred.

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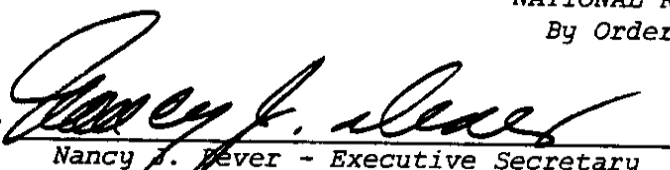
Page 4

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Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Fever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.

