

AWARD NO. 166
Case No. SG-24-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Western Pacific Railroad Company
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

ISSUE: Claim of the General Committee of the Brotherhood of Railroad Signalmen on The Western Pacific Railroad Company that:

(a) The Western Pacific Railroad Company violated the Mediation Agreement A-7128, dated February 7, 1965, when it failed and/or declined to apply Section 1 of Article IV of Mediation Agreement A-7128, by not allowing Mr. M. P. Messerly, a Signalman-Maintainer, the normal rate of compensation for his regularly assigned position on October 1, 1964.

(b) Mr. M. P. Messerly be allowed ten dollars (\$10.00) for each month, commencing in April, 1967, and continuing until Mr. Messerly should be reassigned to the position which he was deprived of at Elko, Nevada.

OPINION OF BOARD: On October 1, 1964, Claimant, a protected employee, was Signal Maintainer at Elko, Nevada, and as such, received a \$10.00 per month housing allowance. His position was abolished in October, 1966. On April 26, 1967, Claimant wrote Carrier seeking payment of the \$10.00 allowance as part of his guaranteed compensation.

Claimant received no reply within the 60 days required by the rules agreement. In fact, no reply was received by the Employees to their subsequent communication on July 17, until November 15, 1967, when Carrier wrote that claim had not been timely filed within 60 days of its occurrence.

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Article V, Section 3, of the August 21, 1954, Agreement provides that money claims for a continuing violation may be filed at any time, with retroactivity not to extend more than 60 days prior to the date of the claim. This was a continuing claim and consequently could be filed as long as the alleged violation continued. Since Carrier did not disallow it within 60 days, it must be allowed to the date of denial. If a claim is without merit, and a timely denial has not been made, it is not allowable ad infinitum. (See NDC Decision 16, 3rd Division Docket, CL 12336, of Article IV, August 21, 1954 Agreement)

With respect to the substance of the claim, it must be held to be without merit. The housing allowance is not part of the "normal rate of compensation," guaranteed in Article IV, Section 1. (See Award No. 137)

A W A R D

(a) Carrier failed to respond timely to the claim in accordance with the rules agreement. Mr. M. P. Messerly shall be allowed \$10.00 for each month commencing April, 1967, and continuing through November, 1967, as a result of Carrier's failure to disallow the claim within 60 days.

(b) On its merits, however, the claim is denied.


Milton Friedman
Neutral Member

Washington, D. C.
December 8, 1969