

COPY

BEFORE
PUBLIC LAW BOARD NO. 34

AWARD NO. 1
(Case No. 12)

TRANSPORTATION - COMMUNICATION EMPLOYEES UNION

vs.

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM:

On April 5, 1966, at 7:40 A.M., brakeman Prichard on No. 33 came in on emergency telephone at Fitzhugh, contacted the dispatcher, and the following communications transpired:

Prichard: "This is Prichard on No. 33 at Fitzhugh, we have 7300 tons and would have 8000 or more tons out of Mill Creek if have to pick up."

Dispatcher: "OK, just cancel your Mill Creek pick up and go on to Madill."

This was a communication directly affecting the movement of Train No. 33, and was a violation of Article I and other rules of the Telegraphers' Agreement. Mr. C. M. Paty, senior idle extra telegrapher, should now be allowed a day's pay, \$21.88, account this violation. Form CT-95 is attached; please advise if payment will be allowed.

Carrier failed to comply with the requirements of Article V(a) of the Agreement of August 21, 1954 in this case. Claim was submitted on April 13, 1966 but Carrier did not give its reasons in writing for denying the claim until your letter of Sept. 22, 1966, file D-4338.

Supt. Rorie's letter of May 18, 1966, file 1019-3-Paty does not, in my opinion, satisfy the requirement for giving reasons for declining a claim. The Superintendent neither denied that the incident occurred or that the agreement was violated, but simply declined the claim stating that we had not furnished proof of the violation.

It is the Carrier's duty equally with the Organization to maintain the Agreement and there is no obligation on the part of the claimant or the Organization to submit "written proof" when filing a claim. The Superintendent's statement that we failed to furnish "written proof" is not a "reason" within the context of Article V(a).

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JURISDICTION:

This Board (Public Law Board No. 34) was duly established by Agreement of the parties, executed May 16, 1967, as provided for in Public Law 89-456 (80 Stat. 208) and in compliance with Regulations promulgated by the National Mediation Board by authority of said statute (P.R. Doc. 66-1245 1). The aforementioned Agreement is incorporated herein by reference thereto.

The "Award No. ____" in the caption of this and all subsequent cases within the jurisdiction of this Board represents the order of the issuance of the award; the "Case No. ____" which appears in parenthesis under the "Award No. ____" identifies the case as listed in Appendix "A" of the May 16, 1967 Agreement of the parties.

OPINION OF BOARD:

In disallowing the claim, the officer of Carrier authorized to receive it stated:

"You have not furnished us written proof that this alleged violation occurred as claimed; therefore, in the absence of such written proof the time slip is returned to you declined."

On the ground that the disallowance did not give a reason within the contemplation of Article V, 1(a) of the August 21, 1954 Agreement, Employees move the claim be allowed as presented.

The filing of the claim is in effect a pleading which alleges facts, the ultimate issue as to violation of the Schedule Agreement and the remedy prayed for. Upon its receipt, Title I, Section 2 First of the Railway Labor Act requires Carrier to investigate the alleged occurrence. Carrier is given 60 days within which to make such investigation and to allow or disallow the claim. Should it decide to disallow, Article V requires it to set forth its reasons in writing. Thus, the issues are framed and Employees are only then put to their proof as to disputed facts and/or interpretation and application of the Agreement they allege to have been violated. Consequently, we find that the reason given for disallowance, supra, is not a "reason" within the contemplation of that term as employed in Article V. Motion GRANTED.

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FINDINGS:

Public Law Board No. 34, upon the whole record and all the evidence, finds and holds:

1. That Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and
3. That Carrier violated Article V, 1(a) of the August 21, 1954 Agreement.

A W A R D

Claim sustained as presented.

O R D E R

Carrier is hereby ordered to make effective Award No. 1, supra, made by Public Law Board No. 34, on or before September 7, 1967

/s/ John H. Dorsey

John H. Dorsey, Chairman

Neutral Member

/s/ T. P. Deaton,

T. P. Deaton, Carrier Member

/s/ J. H. Abbot

J. H. Abbott, Employee Member

Dated at Springfield, Missouri this 7th day of August 1967.