

PUBLIC LAW BOARD NO. 3775

TRANSPORTATION COMMUNICATIONS :
INTERNATIONAL UNION :
 "Organization" : CASE NO. 74 A-B
 : :
 : : AWARD NO. 51
 : :
V. : :
 : :
CONSOLIDATED RAIL CORPORATION : :
 "Carrier" : :

STATEMENT OF CLAIM:

Case 74-A

Claim of the System Committee of the TCIU (CR-3742) that:

The following time claim is submitted through you as the immediate supervisor, in accordance with Rule 45, for your approval, in behalf of Gerald Kelly.

- (a) The Carrier violated the Clerical Rules Agreement, effective July 1, 1979, as amended, particularly Rules 1, (Scope Rule), 24, 40 and other rules, when it permitted an employe not covered by this agreement to perform work accruing to our class and craft on June 22, 1986, instead of calling and working the Claimant who was qualified, available and should have been called and worked. The Carrier permitted an employe of the Pennsylvania Truck Lines to haul company material in trailer CRZ-253462 from South Altoona to Enola.
- (b) Gerald Kelly, be allowed eight (8) hours, at the punitive rate, at the hourly rate of \$12.18 for the above mentioned violation.

Case 74-B

Claim of the System Committee of the TCIU (CR-3743) that:

The following time claim is submitted through you as the immediate supervisor, in accordance with Rule 45, for your approval, in behalf of Gary Crabtree.

- (a) The Carrier violated the Clerical Rules

Agreement, effective July 1, 1979, as amended, particularly Rules 1, (Scope Rule), 24, 40 and other rules, when it permitted an employe not covered by this agreement to perform work accruing to our class and craft on June 22, 1986, instead of calling and working the Claimant who was qualified, available and should have been called and worked. The Carrier permitted an employe of the Pennsylvania Truck Lines to haul company material in trailer CRZ-204247 from South Altoona to Enola.

- (b) Gary Crabtree be allowed eight (8) hours, at the punitive rate, at the hourly rate of \$12.18 for the above mentioned violation.

OPINION OF THE BOARD

It is stipulated that this case is presented to the Board solely as to the question of alleged time limit violations. The parties dispute whether Carrier properly denied the claims at the initial level within the required sixty days following the date of claim.

The basic facts are as follows. The instant claims are two of twelve that were filed on August 2, 1986 concerning the issue set out in the statement of claim. The Carrier responded to all claims within sixty days. Ten of the first level responses included the phrase "claim is without merit and is denied". The instant two claims did not. Rather, by written notice dated September 8, 1986, Carrier's response to the instant claims stated "be advised that the transportation of material does not exclusively accrue to BRAC employees".

Rule 45, cited by the parties, states in relevant part:

- (a) All claims or grievances must be presented in

writing by either the employee or a duly accredited representative on his behalf to the employee's immediate supervisor authorized to receive same within sixty (60) days from the date of occurrence on which claims or grievances are based, except:

(1) Time off duty on account of sickness, vacation, leave of absence suspension or reduction in force, will extend the time limit specified in paragraph (a) of this Rule by the period of such time off duty.

(2) When a claim for compensation alleged to be due is based on an occurrence during a period the employee was out of active service due to sickness, vacation, leave of absence, suspension or reduction in force, it must be made, in writing, within sixty (60) calendar days from the date the employee resumes duty.

When a claim or grievance has been presented in accordance with this paragraph (a), including exceptions (1), and (2), and is denied, the Company 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 reason for such disallowance. If not so notified, the claim or grievance will be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the company as to other similar claims or grievances.

* * * *

(i) A claim may be filed at any time for an alleged continuing violation and all rights of the claimant(s) involved shall be protected by the filing of one claim or grievance based thereon so long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than sixty (60) days prior to the filing thereof.

The Organization contends that Carrier has violated the time limits of Rule 45 because it never stated within sixty days of receipt of claim that it was denying the claim. The Carrier maintains that it's written response of September 8 left no doubt that the two instant claims were being denied. In addition,

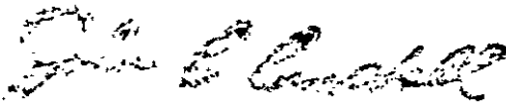
Carrier maintains that these two claims were invalid when presented, as they were submitted with wrong dates.

The Board has determined that the claim must be denied.

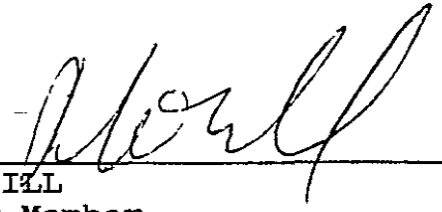
The Board agrees with Carrier that there could be no mistaking the fact that the two instant claims, like the other claims filed concerning this matter, were being denied. It is common sense, not magic words, which constitute a denial pursuant to Rule 45. As the written memorandum of September 8 containing Carrier's denial was submitted well within sixty days of the claims being filed, it follows that Carrier has not violated the time limits of Rule 45.

AWARD

Claim denied.



J. C. CAMPBELL
Organization Member



R. O'NEILL
Carrier Member



S. E. BUCHHEIT
Neutral Member

OCT 10 1989