

SPECIAL BOARD OF ADJUSTMENT NO. 192

PARTIES: BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES
and
THE BALTIMORE AND OHIO RAILROAD COMPANY



AWARD IN DOCKET NO. 24

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

(a) Carrier violated the Agreement between Participating Eastern, Western, and Southeastern Carriers and Employees represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto, signed at Chicago, Illinois, on August 21, 1954, when it failed to comply with the provisions of Article V, Section 1(a) of said Agreement, in that claim was not denied within the 60 day period provided therein, and

(b) That Mrs. Evelyn Pitzer now be paid at the pro rata rate for December 30 and 31, 1954, account furloughed employee being used to fill position 68-2-117, such furloughed employee not having properly registered in accordance with the provisions of Article IV, Section 2, of the August 21, 1954 Agreement.

FINDINGS:

A short time prior to January 13, 1955 the claimant filed a time slip claiming time because of not being permitted to work a certain position on December 30 and 31, 1954. The claim was declined by the Regional Accountant on January 13, 1955 and again on February 1, 1955. On February 8, 1955 the claimant notified the Regional Accountant that she wished to withdraw the claim. On February 11, 1955 the Division Chairman filed a claim in favor of the claimant for December 30 and 31, 1954 asserting a different theory in support thereof. Thereafter several exchanges of correspondence passed between the Regional Accountant and the Division Chairman in which the Regional Accountant explained the action which had taken place with respect to the first time slip filed by claimant. We are not informed of the dates nor of the exact contents of that correspondence, but apparently there was no express denial of the claim filed February 11, 1955 contained therein.

The employees argue that this claim should now be allowed since it was not denied within the sixty day limit provided for in the August 21, 1954 Agreement. (Time limit rule.)

The Carrier contends that the claim should be denied on the basis that the claim originally filed was not appealed to the Superintendent within 60 days.

It is apparent that the claim filed by claimant and that filed by the Division Chairman involved the same occurrence and that there was no difference between the time claimed in either case.

Article V Section 1(a) of the August 21, 1954 agreement requires that if any claim is disallowed within 60 days from the date same is filed, the Carrier shall notify whoever filed the claim or grievance (the employee or his representative) in writing of the reason for such disallowance. The Carrier's Regional

Accountant complied with that provision of the Agreement. If appeal was to be taken it was then incumbent upon the employee or her representative to appeal that decision to the Superintendent within 60 days from notice of disallowance, not to withdraw and then file a new claim covering the same occurrence and asking for the same relief. Obviously, the Agreement of August 21, 1954 did not intend that claims identical in nature could be filed, withdrawn at will and re-filed. This would lead to chaos and place an undue burden on the Carrier where it could find itself in the position of having to decline the same claim over and over again or face the penalty of allowance. The mere fact that the Division Chairman asserted a different theory in support of the claim does not alter the fact that it was the same claim. He would have been free to argue that same theory on appeal. It is well known that General Chairmen very frequently and properly seek to support claims on final handling on a different basis than had been argued in the earlier steps of the grievance procedure.

We find that this claim is barred by reason of the time limitation rule.

AWARD

The claim is not payable because of being barred under the time limitation rule.

/s/ Francis J. Robertson
Francis J. Robertson
Chairman

E. J. Hoffman
Employee Member

/s/ T. S. Woods
T. S. Woods
Carrier Member

Dated at Baltimore, Maryland this 17th day of February, 1959.