

AWARD NO. 23
Case No. 7

SPECIAL BOARD OF ADJUSTMENT NO. 259

THE ORDER OF RAILROAD TELEGRAPHERS)
vs.)
NEW YORK CENTRAL RAILROAD, EASTERN DISTRICT)
(except Boston and Albany Division) and NEW)
YORK DISTRICT)

STATEMENT OF CLAIM:

1. Carrier violated the terms of the agreement between the parties when it failed to reimburse R. C. Kedney as requested by him on October 31, 1957, for money paid to carrier under a mistake of fact.
2. Carrier violated the terms of the agreement between the parties when it failed to reimburse M. A. Civita as requested by him on November 1, 1957, for money paid to carrier under a mistake of fact.
3. Carrier violated the terms of the agreement between the parties when it failed to reimburse P. A. Garrity as requested by him on December 3, 1957, for money paid to carrier under a mistake of fact.
4. Carrier shall now be required to reimburse:-
 - (a) R. O. Kedney in the amount of \$60.00 together with interest at the rate of 6% from October 31, 1957.
 - (b) M. A. Civita in the amount of \$51.41 together with interest at the rate of 6% from November 1, 1957, and
 - (c) P. A. Garrity in the amount of \$28.00 together with interest at the rate of 6% from December 3, 1957.

OPINION OF BOARD:

On January 19, 1956 Claimant Civita, Assistant Agent at Scarsdale, New York, discovered a shortage of \$51.41. It appears that this loss was due to burglary. During the period between August 20 and November 29, 1956, Mr. Civita made restitution to the Carrier for the amount of the loss.

On August 24, 1956 Claimant Garrity, Agent at Greystone, New York reported a shortage of \$28.00 in company funds, this loss also apparently having been due to burglary. Mr. Garrity reimbursed the Carrier for the amount of the loss on September 30, 1956.

On January 9, 1957 Claimant Kedney, Agent at Irvington, New York, discovered a shortage of \$60.00 in company funds, this discrepancy likewise apparently being due to burglary. Agent Kedney made restitution of the amount of the loss on the same day. All three Claimants state that they made restitution to the Carrier in the belief that their failure to do so would result in a claim being made by the Carrier against the Bonding Company, which action might ultimately result in cancellation of each employe's bond, thus rendering the employe unable to continue in a position which involved the handling of funds.

In October, 1957, the Claimants were advised by their Local Chairman that the Carrier had been unsuccessful in obtaining recovery from the Bonding Company for the amount of the loss sustained at another station due to burglary, and that said Company would take no action to revoke the bond of the employe in charge of the station as a result of such an event. The Claimants then made written requests upon the Carrier for return of the amounts they had paid as restitution for the losses sustained at their locations. These requests were contained in letters dated October 31, November 1 and December 3, 1957. It was the Claimants' position that these restitutions had been made under a mistake of fact with respect to whether their bonds would have been jeopardized had they not made good the losses involved. The Carrier failed to answer these letters, with the result that on February 10, 1958 the Local Chairman filed a claim for reimbursement of the amounts involved, with interest from the date that each Claimant requested return of the funds he had paid. The Organization contends this claim is valid on its merits. It also is asserted that the Carrier was obligated to grant the written requests of the Claimants since it failed to make timely denial of said claims as required by Article V of the so-called Chicago Agreement dated August 21, 1954. The Carrier responds that the merits of this dispute may not be decided by the Board since the Claimants did not file timely claims.

It is provided in Article V of the Chicago Agreement that if the Carrier fails to give written notification of the denial of a claim within 60 days from the date it is filed, such claim shall be allowed as presented. We find this time limit does not come into play unless the claim is valid in the first instance, however.

The same Article provides that a claim must be filed within 60 days from the date of occurrence on which the claim is based. In the subject case the occurrence precipitating the claims filed by the subject employes was the restitution of funds which they made to the Carrier. It follows that the claims for return of the money paid were submitted to the Carrier long after the 60 day time limit had expired for each grieving employe. Article V of the Chicago Agreement does provide that protests involving continuing claims may be filed at any time, although there is a 60 day limit on retroactivity. We are not confronted with continuing claims in the subject case, however.

We do not find substance in the contention that the delay in filing claims for return of the money involved should be excused due to a mistake in facts. We note that on September 28, 1956 another employe complied with the Carrier's request for restitution of the amount of a loss incurred at his station due to

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burglary, but promptly filed a written protest. This claim was processed by the same Local Chairman having representation jurisdiction over the present Claimants. The claim in question was finally appealed to this Board and decided in Award No. 3. The claimants in the present case also could have filed timely claims.

We are of the opinion that as a matter of good labor relations the Carrier should have responded promptly to the Claimants' letters. But Management's failure to disallow these claims within 60 days did not alter the fact that they were untimely and therefore not entitled to consideration on their merits. The claim filed by the Local Chairman on February 10, 1958 was also untimely and thus is not properly before the Board. A dismissal award is required.

AWARD:

Claim dismissed.

/s/ Lloyd H. Bailer
Lloyd H. Bailer, Chairman

/s/ R. J. Woodman
R. J. Woodman, Employe Member

/s/ Chas. N. Faris
Charles N. Faris, Carrier Member

New York, New York
February 12, 1959