

Award No. 11987
Docket No. TE-10434

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Jim A. Rinehart, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway, that:

1. Carrier violated the Agreement between the parties when on March 19, 1957 and on March 21, 1957, it required or permitted a train service employe, not covered by the Agreement, to copy a message from the train dispatcher at Phoebe, Virginia.

2. Carrier shall compensate the senior extra or otherwise idle telegrapher (to be determined by a joint check of the Carrier's records) in the amount of a day's pay of eight hours on each date.

EMPLOYES' STATEMENT OF FACTS: The Agreements between the parties are available to your Board and by this reference are made a part hereof.

Phoebe, Virginia, is a station located on the Norfolk Division of this Carrier a few miles east of Lynchburg, Virginia, at the junction of the old main line and the Lynchburg "cut-off". The so-called old main line goes through Lynchburg, and over this line the passenger trains are operated; the cut-off extends from Phoebe to Forest, a station a few miles west of Lynchburg, over which all the through freight trains are operated. For many years the Carrier maintained continuous around-the-clock telegraph service at Phoebe seven days per week. During the year 1953, with the advent of CTC operation on this Division, the Carrier decided that it could dispense with communication service at this point and abolished the telegrapher's positions there. At the time cause of this claim arose, there were no positions under the Agreement at Phoebe.

On March 19, 1957 at 11:45 A. M., the head-end brakeman on Extra 1210 East used the telephone on the train dispatcher's circuit and copied the following message from the dispatcher:

"Crewe March 19, 1957

Extra 1210 east Phoebe

the Telegraphers' Agreement. Consequently, as your Board said in Award 4791, it must be held that the re-adoption of the rule, in the effective Agreement in the instant case as well as in other earlier Agreements, was not intended to change the meaning previously given to it. And, as your Board further held in Award 4791, it follows that under the Agreement on this property it is not a violation of the Scope Rule of the Telegraphers' Agreement for employes, not covered by the Telegraphers' Agreement, to transmit or receive by telephone messages of record or not of record.

PART VIII.

Third Division Awards

The Carrier's position as set forth in this submission clearly proves there is no merit whatever to the Employes' claims in this case. In support of its position, the Carrier cites the following Third Division Awards:

652	4791	5564	6778
653	4827	5619	6779
700	4879	5660	6788
752	4889	5702	6824
1708	4922	5777	6903
2679	5079	5866	6929
3003	5109	6007	6959
4464	5120	6159	6996
4512	5318	6363	7031
4585	5404	6364	7066
4643	5416	6487	7076
4733	5468	6758	7153
			7154

Denial of the two claims in the instant case is respectfully requested.

All material used in this submission was presented to or was known by the Employes while this claim was being progressed on the property.

(Exhibits not reproduced.)

OPINION OF BOARD: When the claim was first presented on the property the Carrier's Superintendent declined it giving two reasons. The first was that the message involved was not a communication of record and the second was that because the individual Claimant was not named it did not comply with Article V, Section 1(a) of the August 21, 1954 Agreement.

The Organization appealed to the next highest officer of the Carrier who also declined the claim giving as the reason the failure of the claim to name the employe involved. He did set forth the reason that the message did not constitute a communication of record. Appeal was then made to the highest officer of the Carrier on the property and he declined the claim after con-

ference thereon and gave as the only reason therefor that "the employe involved" was not named and the claim thus failed to comply with the August 21, 1954 Agreement.

The August 21, 1954 Agreement also provides that when a claim is denied the Carrier shall within 60 days from the date the same is filed, notify whoever filed it, in writing the reasons for such disallowance, failing which, the claim shall be allowed as presented.

The Organization contends that the way the last denial was handled on the property precludes us from now considering anything other than the question of an unnamed Claimant. That it was necessary for each of Carrier's Officers to when disallowing the claim to give in writing all reasons for such disallowance.

While such a rule seems very harsh, this Board has held that the reasons for denial must be given at all levels on the property and in particular by the Carrier's highest officer. Otherwise such reason is not before us for any purpose. See Award 10759 — McGrath and Awards 9253, 9205, 9492.

Consequently the only question before us is whether it was necessary that Claimant be named. That contention has been rejected by this Board as the identity can be determined from Carrier's records. See Award 10801 — Kramer, 10533 — Mitchell, 10576 — LaBelle.

The claim that the Agreement was violated therefore must be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1963.

**CARRIER MEMBERS' DISSSENT TO AWARD 11987,
DOCKET TE-10434**

Award 11987 reduces the Division's backlog by one case, but in all other respects it is a complete nullity.

As referred to the Board by the Employes, the claim covered by Docket TE-10484 very plainly placed only the merits of same in issue. Yet, the Referee decided the claim on the basis of an alleged procedural technicality, one which was not raised on the property. Aside from the fact that issues raised for the first time before the Board cannot be considered (Awards 8324, 8484, 8784, 10076, 11174, 11178, 11735), the issue upon which the claim was decided is not framed in and by the Employes' statement of claim and, hence, could not otherwise be considered. (Awards 6954, 8426, 10904, 11005, 11006, 11735.)

Be that as it may, nothing in Article V prescribes the language which must be used in disallowing a claim. (Award 9615.) So long as a Carrier gives a reason for its decision, compliance with Article V is had and that a claim is defective under Article V is a reason. (Awards 10368, 10416.) Furthermore, carrier is not limited to the reason given for the denial of a claim in the first instance. (Award 10767.)

The evidence of record does not support otherwise the Referee's erroneous conclusion that, in the handling on the property, carrier's highest officer did not decline the claim on the merits but solely on the ground that "the employe involved" was not named. The highest officer's letter to the General Chairman of August 1, 1957 (which appeared in the record as Carrier's Exhibit "C" and O.R.T. Exhibit 8) reads:

"Your letter June 8th and conference July 31st on behalf of 'the senior extra or otherwise idle telegrapher (to be determined by a joint check of the carrier's records) for eight (8) hours at the minimum telegrapher's rate of pay' for March 19 and 21, 1957 account head brakeman on Extra 1210 East receiving by telephone at Phoebe information from the dispatcher as to cars his train was to pick up at that point. Article No. 1, Telegraphers' Agreement is cited in support of the claim.

"We note this claim is made on behalf of 'the senior extra or otherwise idle telegrapher (to be determined by a joint check of the Carrier's records) * * *'. In conference we directed attention to the fact that such is not in compliance with that part of Article V, Section 1(a) of Agreement of August 21, 1954 reading: 'All claims or grievances must be presented in writing by or on behalf of the employe involved * * *'. It is our position that 'the employe involved', as emphasized, requires the naming of the individual employe for whom claim is presented.

"In our opinion the claim is not supported by the article cited and it is declined." (Emphasis ours.)

The above letter plainly shows that the claim was discussed by the parties in conference on July 31. In the first paragraph, it was pointed out that the organization cited Article No. 1, Telegraphers' Agreement, in support of the claim. In the second paragraph, carrier restated its position that the claim in behalf of "the senior extra or otherwise idle telegrapher" did not meet the requirements of Article V, Section 1(a) of Agreement of August 21, 1954. In the third paragraph, carrier confirmed its declination of the claim on the merits with the statement "In our opinion the claim is not supported by the article cited and it is declined." It is obvious that the highest officer was here referring to Article No. 1 of the Telegraphers' Agreement, which had been cited by the organization in support of the claim.

O. R. T. Exhibit 9 was the General Chairman's letter to Carrier of November 5, making reference to carrier's letter of August 1, 1957. The last paragraph of the General Chairman's letter reads—"Your argument that the rules do not support the claim cannot be accepted."

Awards 10759, 9253, 9205 and 9492 cited by the Referee do not stand for the proposition for which he cites them. These awards only stand for the proposition that, under Article V, when a claim is to be disallowed a reason must be given therefore, merely saying "claim is denied" being held not to be a reason. No such situation existed in the instant case. Further, the conclusion the Referee derives from the above awards is an unsupported conclusion of his own making as the Board has not so held.

The Referee, upon rejecting, even though erroneously, carrier's contention that the claim should be dismissed because of the Organization's failure to specify "the employe involved" as required by Article V, should have considered the claim on its merits because, and very plainly, the Employes' statement of claim placed only the merits in issue. In this connection, the Referee was presented recent Awards 10425, 10525, 10823, and 11306, denying claims identical in principle between these parties.

R. A. DeRossett

R. E. Black

W. F. Euker

G. L. Naylor

W. M. Roberts