

Award No. 18881
Docket No. CL-19077

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION
EMPLOYEES**

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6862) that:

(a) Carrier violated the Clerks' Agreement when Supt.-Stations, Mr. J. C. DeLongis, failed to deny claim within the 60-day period provided therein and because of such violation, shall not be required to pay the following claims as presented:

(1) Mr. John Smith, Extra Clerk, Sayre, Pa., for the following dates, March 25, 26, 27, 28, 29, April 3, 4, 5, and 10, 1968, a total of 9 days pay at the pro-rata rate as Clerk.

(2) Mr. Michael Kraft, Extra Clerk, Sayre, Pa., for the following dates, March 18, 19, 20, 21, and 22, 1968, a total of 5 days pays at the pro-rata rate as Clerk.

(b) Carrier also violated Rule 1, Scope, and other rules of the Agreement, when it removed the work and/or positions out from coverage of the Clerks' Agreement to Employees not covered thereby and Employees mentioned in (1), and (2) above are entitled to claims as presented.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement as revised May 1, 1955, and subsequent thereto, referred to as the Agreement between the parties, the Lehigh Valley Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, which Agreement is on file with the Board and by reference thereto is made a part of this statement of facts.

The following Employee Exhibits are also, by reference made a part of this Statement of Facts:

EMPLOYEES EXHIBIT No. 1:

Letter dated April 22, 1968, from Mr. E. J. Flaherty, Trainmaster, denying claim submitted to him in letter dated April 11, 1968, from Mr. John Smith, Extra Clerk, Sayre, Pa.

violated? A blanket statement that "other rules" were violated certainly cannot be considered as proper and meeting the requirements of submitting claims as spelled out in the August 21, 1954 National Agreement and/or rules of the National Railroad Adjustment Board.

The initial claims on the property dated April 18, 1968 were not even signed by the claimants (See Carrier's Exhibits "F" and "G") and exception was taken by Carrier's Supervisor of Stations in his denials of June 11, 1968 (Carrier's Exhibits "H" and "I"). This dispute reeks of improper handling by the organization. Then the General Chairman, in his appeal dated August 8, 1968 (Carrier's Exhibit "J") combined the two separate claims and exception was taken by the Superintendent Stations in his September 30, 1968 denial (Carrier's Exhibit "K") to that feature; again pointing out claims were unsigned and denying General Chairman's attempt to include other than the dates listed in the initial claims:

The General Chairman's appeal to the Chief of Personnel (now Director of Labor Relations and Personnel) dated December 9, 1968, (Carrier's Exhibit "L") stresses sustaining the claim due to the alleged failure of the Superintendent Stations to timely respond to his appeal to him, forgetting the facts, if any, in this case and basing his claim on the time limit feature alone, with the exception of the following paragraph:

"Claims were submitted by these two employes, due to Tractor-Trailer drivers, and others performing clerical duties at Sayre, Piggy-Back Ramp."

The carrier in denying the General Chairman's appeal, refuted the alleged time limit violation with documented proof thereof and also on the basis of the facts in this dispute (See Carrier's Exhibit "A"). (Exhibits not reproduced)

OPINION OF BOARD: The cardinal issue involved in this dispute is: Did Superintendent of Stations, Mr. J. C. DeLongis, timely deny the claim appealed to him by the General Chairman on August 8, 1968? It is apparent from the record that this is the sole issue that was joined on the property when the matter was appealed to the Carrier's Director of Labor Relations and Personnel. The record is absent evidence that the merits of the initial claim was handled on appeal and submissions by both parties to this Board barely touch upon the merits. Accordingly, we shall confine our decision to the alleged violation of Rule 33 — Time Limits, by Superintendent J. C. DeLongis.

Claims of John Smith, Extra Clerk, and Michael Kraft, Extra Clerk, were appealed to Mr. DeLongis on August 8, 1968. On December 9, 1968, not having received a reply to his August 8, 1968 letter, the General Chairman appealed to the next level. From that time until the case was referred to this Board extensive handling was given the matter and several conferences were held at which the Carrier submitted evidence of probative value that Superintendent DeLongis, by Certified Letter, Return Receipt Requested, denied Smith's and Kraft's claims on September 30, 1968. This letter was not delivered by the Post Office even though it was properly addressed. On October 17, 1968 the letter was returned to Superintendent DeLongis by the Post Office Department. Following its return an inquiry was addressed to the Post Office Department seeking the reason it was not delivered. The Post Office Department indicated that in accordance with postal regulations the letter carrier, finding

no one home at the address, left a 'Notice of Arrival' when he was unable to deliver the Certified Letter. This Notice indicated that the letter could be picked up at the Post Office. When the letter was not picked up after fifteen (15) days it was returned to Superintendent DeLongis.

In Award 11505, this Board held:

"It is a general principle of the law of agency that a letter properly addressed, stamped, and deposited in the United States mail is presumed to have been received by the addressee denies receipt of the letter then the addressor has the burden of proving that the letter was in fact received. Petitioner herein has adduced no proof, in the record, to prove de facto receipt of the letter by the Carrier."

While we recognize that the Carrier has adduced no proof of de facto receipt of the letter by the Organization, it in fact has been proved that the Organization did not receive the letter as it was returned; we nonetheless, find that substantial probative proof is in the record that a letter timely denying the claim was set. The letter denied the claim and following the denial the Organization had an opportunity to pursue the claim on its merits. When first advised of the mix-up in the denial letter, that was timely written, after appeal to Carrier's Director of Labor Relations and Personnel, the Organization had another opportunity to pursue the claim on its merits. This they elected not to do in both instances.

From the record we conclude that Superintendent DeLongis timely denied the claim on September 30, 1968 and took reasonable steps to insure delivery of notice of denial. Following the Superintendent's denial the Organization abandoned pursuit of the claim on its merits. Rather, they sought to have it paid under the Time Limits rule. Under the circumstances in this case, payment under the Time Limits rule is not warranted. A dismissal Award is, therefore, in order.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.

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