Award No. 2287
Docket No. 2253
2-B&OCT-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 130, RAILWAY EMPLOYES' DEPARTMENT A. F. of L. (Electrical Workers)

THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the assignment of Electrican W. T. Nickerson was improperly changed from working Sunday through Thursday, with rest days Friday and Saturday as Electrician, to working on a newly created position consisting of Relief Foreman Saturday, Sunday, Monday, Tuesday and Electrician on Wednesday with rest days of Thursday and Friday effective July 7, 1951.

2. That accordingly the Carrier be ordered to:

a) Restore the aforesaid Electrician to his former workweek assignment of Sunday through Thursday with rest days of Friday and Saturday as an Electrician.

b) Compensate the aforesaid Electrician additionally for the services he was assigned to perform outside his regularly bulletined assignment at the rate of time and one-half retroactive to July 7, 1951.

c) Compensate the aforesaid Electrician additionally in the amount of eight hours for the services he was not permitted to perform on Sunday, Monday, Tuesday and Thursday at the straight time rate retroactive to July 7, 1951.

EMPLOYES' STATEMENT OF FACTS: Electrician Nickerson—hereinafter referred to as the claimant—is employed at the 14th Street Coach Yard, Chicago, Illinois on the 8:00 A. M. to 4:00 P. M. shift.

On June 11, 1951, claimant was assigned by Bulletin E-39A to position E-39 on which he placed his bid—Sunday through Thursday assignment from 7:00 A. M. to 3:00 P. M., with Friday and Saturday as rest days.

On July 7, 1951, and thereafter claimant was required to work on Saturday (his bulletined rest day), Sunday, Monday and Tuesday, relieving the

as a seven-day machinist position, and (b) that it was improper and a violation of the controlling agreement to use a machinist less than five days a week on work of his classification. Aside from what has already been stated the short and decisive answer to each of these contentions is to be found in the agreement itself which clearly contemplates that employes (machinists) may be used to temporarily relieve foremen. In fact Rule 31 thereof expressly provides that employes used temporarily to relieve foreman will receive the foreman's rate of pay and shall work the regular hours of the foreman while so used. The record discloses claimant was so used and that he was paid in conformity with the rule. Under such circumstances we can discern no sound ground for holding the agreement was violated. Therefore these two contentions, like the one previously discussed and disposed of, cannot be upheld." The claim in Award 1528 was denied.

The carrier asserts that the claim made in the instant case at parts 1 and 2 is wholly without merit. The carrier respectfully requests this Division to so hold and to deny the claim in its entirety.

CARRIER'S SPECIAL STATEMENT ON THE NEW TIME LIMIT RULE:

The carrier submits there may be some substantial question in this case as to whether or not the provisions of the new time limit rule in the August 21, 1954, agreement have been met.

Article V, Section 2 reads:

"With respect to all claims or grievances which arose or arise out of occurrences prior to the effective date of this rule, and which have not been filed by that date, such claims or grievances must be filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) or Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred."

The final decision on this case is dated December 22, 1954. There is no agreement to extend the time limit.

The rule makes mandatory a period of 12 months, i.e., from January 1, 1955, for "an appeal to be taken to the appropriate board of adjustment." A declaration of intention to file (in this case dated December 28, 1955) is not an "appeal" within the meaning of the rule, i.e., a full and complete statement of facts.

There is some serious question whether the time limit provision in Article V (2) has been complied with. The claim is barred if the Board so finds.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

On June 11, 1951, claimant was assigned as an electrican by bulletin to position E-39, Sunday through Thursday, 7:00 A. M. to 3:00 P. M., with Friday and Saturday as rest days. On July 7, 1951 claimant was required to work on Saturday (his bulletined rest day), Sunday, Monday and Tuesday, relieving the foreman and assistant foreman on their rest days, and to work as an electrician on Wednesday with Thursday and Friday as his rest days. Position E-39 was left vacant on Sunday, Monday, Tuesday and Thursday. It is the contention of the organization that the assignment of claimant on and following July 7, 1951, is in violation of the rules and reparations are demanded.

The carrier contends that the Board does not have jurisdiction of the case. This is based on the fact that the organization's submission was not filed within the one year time limit prescribed by Article V, Section 2, of the Agreement of August 21, 1954. It is admitted that a declaration of intention to appeal was filed with the Board within the prescribed period. The filing of the declaration of intention to appeal invests the Board with jurisdiction of the appeal, Docket 2250, Award No. 2285.

The record discloses that the instant claim was first presented to the carrier on July 21, 1951. It was declined on September 14, 1951, by the general car foreman. On January 6, 1953, it was appealed to Master Mechanic Short, after it had been dormant for more than sixteen (16) months. It was declined by the Master Mechanic on February 26, 1953. Nothing more was done until October 3, 1954, after it had remained dormant for more than nineteen (19) months. On December 22, 1954, carrier advised the general chairman that it considered the excessive delay in handling as an acceptance of carrier's declination of the claim. The notice of intent to appeal was filed with this Board on December 28, 1955.

The carrier's position is correct. The Railway Labor Act contemplates that diligence will be exercised in the processing of claims against the carrier. A reasonable time to take the necessary steps in the handling of a claim is all that the organization is entitled to where the agreement does not fix the time for their performance. In the instant case the organization waited more than sixteen (16) months to appeal the claim from the general car foreman to the Master Mechanic. It took the organization an additional nineteen (19) months to again take it up with the carrier and an additional fourteen (14) months to give notice of intention to appeal to this Board.

Such delay is sufficient to defeat a claim, particularly a running claim such as we have in the present case. The record indicates a complete want of diligence in the handling of the claim. The time employed in progressing the claim exceeds that which under any circumstances can be deemed reasonable when the carrier has not been a party to or waived the delay on the property. In such cases the carrier may properly assume that the declination of the claim has been accepted. We deny the claim because of want of reasonable diligence in its prosecution.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1956.