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Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6533
SECOND DIVISION Docket No. 6353
2-MT-CM-'73

The Second Division consisted of the regular members and in addition Referee Irving R. Shapiro when award was rendered.

Parties to Dispute: (System Federation No. 66, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)

(Minnesota Transfer Railway Company

Dispute: Claim of Employes:

1. That under the current agreement Carrier improperly abolished two Carmen's positions at South St. Paul, Minnesota and subsequently filled these two positions with Carmen from another Carrier. (C&N.W.)

2. That accordingly, the Carrier be ordered to compensate all the rostered Carmen: J. M. Wickoren, R. G. Kviberg, J. W. Johnson, W. J. Sand, R. B. Anderson, A. Kropelnicki, A. A. Westphall, T. C. Venass, 18 hours time and one-half pay each day to be divided amongst them, commencing February 15, 1971 and continuing until Carmen positions at South St. Paul are filled with Carmen employed by the Minnesota Transfer Railway Company.

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.

Parties to said dispute waived right of appearance at hearing thereon.

In the cities of Minneapolis and St. Paul, Minnesota, twelve Carriers serving those communities organized the Twin City Car Inspection Association many years ago. Its purpose is to govern and regulate the interchange of cars between all railroads and switching lines in the area and the car repair work and other car department services rendered by the Carrier, party hereto, for the members of the Association. Eight of the Carriers, affiliated with the Association, joined in the establishing of the Minnesota Transfer Railway Company to provide switching services and perform certain car department functions for Carriers operating in the area by agreement of said carriers. Until December 1, 1969, two carmen employed by and on the seniority roster of Minnesota

Transfer, were assigned to and utilized at the South St. Paul Terminal owned and operated by the Chicago and North Western Railway. On September 30, 1969, Carrier, with copy to Petitioner, sent the following identical notices to the two carmen who were assigned to work at the Chicago and North Western South St. Paul Terminal:

> "This is to advise your positions, that is position numbers 24 and 25, are hereby abolished permanently at South St. Paul at the close of your shift on December 1, 1969.
>
> This is in accordance with action taken by the Twin City Joint Car Inspection Association."

The two carmen did not elect to assert their seniority or other rights relative to job retention with Minnesota Transfer.

On April 16, 1971, Petitioner's General Chairman filed a claim with Carrier which is under review herein.

Carrier moves to dismiss the claim on the ground that it was not timely presented, April 16, 1971 being 593 days after the notice of abolition of the positions and 507 days after the cessation of the operation by Carrier at the location and therefore disallowed under terms of Article V of the National Mediation Agreement of August 21, 1954 which provides in part:

> "1. (a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. ..."

Petitioner alleges that it did not become aware of the fact that the work performed by Minnesota Transfer Carmen until December 1, 1969 continued to be done at the South St. Paul Terminal by Carmen in the employ of the C & N W railway until April 2, 1971, and the claim was presented well within sixty days of its being alerted to the actuality of the circumstances at South St. Paul Terminal. It invokes the following sentences of Article V (a) of the National Mediation Agreement of August, 1954:

> "Should any such claim or grievance be disallowed, the carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employee or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

This contention is based on Carrier's first reply to the claim dated May 7, 1971. It is not sustainable. The letter of disallowance indicated a reason which while not fully expository, should have been clearly understood. Furthermore, on the sixtieth day following its receipt of the claim, Carrier's Vice President and General Manager reaffirmed the positions of its May 7th rejection in greater detail, satisfying the requirements of the cited provision.

In its processing of the claim on the property, Petitioner also invoked the following provision of Article V of the August 1954 Mediation Agreement to counter Carrier's disallowance of the claim:

> "3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. ..."

In order to ascertain whether this term of the Agreement is applicable, it is necessary to determine that a violation of the Controlling Agreement occurred as alleged by Petitioner.

Certain facts are not disputed. This Carrier does not own or control the South St. Paul Terminal. The services it rendered to that installation was by arrangement with the Carrier which holds a proprietory interest therein. Said Carrier, with approval of the Twin City Joint Car Inspection Association uncontrovertedly undertook to discontinue the arrangement for Carmen work to be performed for it at the Terminal. Nothing in the record indicated that Carrier, party hereto, can compel the Terminal owner to retain it for such purposes. In fact, in its dispute with this Carrier, which was submitted to Special Board of Adjustment No. 570, Petitioner fully accepted the right of the owning Carrier of an installation, facility, or track to discontinue utilization of Minnesota Transfer and service such with its own employes. Petitioner, by this claim, is seeking to compel this Carrier to impose upon the C & N W Railway, a requirement that it retain it for services it does not desire to secure from it. Nothing in the rules or agreements cited affords the Petitioner the right to effectuate such a result. Based upon the record herein, it appears quite clear that Respondent Carrier could not legally satisfy the claim that it install two of its Carmen to perform work at the South St. Paul Terminal, a facility it does not own and control and the proprietor of which cancelled its arrangement therefor. (Award 4570.)

Absent valid grounds for alleging a violation of the Controlling Agreement, Petitioner cannot be afforded the rights accorded by Article V, 3 of the National Mediation Agreement of August 21, 1954.

Petitioner's allegation that it acted promptly upon becoming aware of a possible grievance and therefore met the requirements of Article V 1 (a) is also rejected. Explicit in that provision is that grievances be filed within the time limit set forth. It affords no exception. It is further noted that it is inconceivable that Claimants and Petitioner were not or reasonably could not become aware of operations at South St. Paul Terminal for a period in excess of sixteen months. Their undue delay was clearly at variance with the intent and purpose of Article V of the August, 1954 Agreement which endeavors to bring about prompt presentation and resolution of claims and grievances.

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AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: E. R. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 20th day of June, 1973.