

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY

(Joseph B. Fleming and Aaron Colnon, Trustees)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees on the Chicago, Rock Island and Pacific Railway Company:

(a) That Clarence Boldt, Ledger Clerk, Auditor Car Service Account's Office, Chicago, Illinois, rate be adjusted under Provision of Rule 69 from \$192.60 to \$207.60 per month. (Above rates take into consideration rate increase of \$10.20 in 1937 and \$20.40 in 1941.)

(b) That this claim be retroactive to May 25, 1933 in favor of Mr. Clarence Boldt and other employees who may have filled this position.

EMPLOYEES' STATEMENT OF FACTS: On April 2, 1941, Division Chairman L. K. Roll, addressed a letter to F. J. Sindelar, A. C. S. A., reading as follows:

"Referring to claim of Mr. Clarence Boldt for an increase of \$27.80 per month on his present position of Ledger Clerk, present salary \$172.20, under Rule 69.

"Please advise if you will join me in making a joint check and statement of facts to cover this claim so as to determine if this claim is justified."

Following is reply from Asst. General Auditor W. L. Linnehan, to above letter addressed to Mr. Sindelar:

"Your letter of April 2nd, addressed to Mr. Sindelar, regarding claim of Clarence Boldt has been referred to me.

"My investigation has shown no basis for a claim under Rule 69. I, therefore, suggest that you work up a statement of the claim and the facts which pertain thereto, and if you then think the facts as you find them will warrant consideration, I will go over the details with you and we will make a joint statement."

Division Chairman Roll replied to Mr. Linnehan's letter of April 3, 1941, on June 16, 1941, as follows:

"Your letter of April 3rd, file 2211-B in connection with claim of Mr. Clarence Boldt for adjustment in salary under Rule 69.

there were approximately eighty other positions in the office of Auditor Car Service Accounts which were not included in that adjustment and inasmuch as there was no pending claim in behalf of Mr. Boldt and further that all of the money allocated for the settlement of the case covered by Award No. 1146 had been distributed, Mr. Roll was advised that the Carrier could not consistently grant increases in pay to any additional positions. It is apparent that Mr. Boldt's displeasure because of not being included in the 1940 adjustment prompted him to attempt to find some means of trying to obtain an increase in his rate of pay which resulted in the later writing of his letter dated March 24th, 1941 addressed to Mr. Sindelar making a claim on the basis of alleged violation of Rule 69 since July 1st, 1933.

The Carrier has shown that the small amount of new work given the claimant on the occasions set forth from 1936 to 1939 was clerical work related to his regular duties, that in 1939 he was relieved of compiling a monthly report to General Auditor, C. R. I. & G. Railway, showing per diem mileage and reclaim receipts from foreign railroads, also journal voucher showing hire of equipment debits and credits taken into Income Account which required approximately sixteen hours time per month and without disregarding the staleness of the claim the Carrier contends that none of those duties imposed a sufficient increase or decrease in the duties and responsibilities of the position to warrant an adjustment in rate of pay as contemplated by a reasonable application of Rule 69.

As shown in the employees' statement of claim and as stated heretofore, the Organization is now asking your Board to award an increase of \$15.00 per month in the rate of pay to the position of Ledger Clerk retroactive to May 25th, 1933 and we understand in support of that request they propose to refer to changes which might have occurred as long ago as the year 1930. In connection therewith and in fact, in regard to the instant claim in its entirety the Carrier contends that the long lapse of time has barred the employees from maintaining any claim in this case and in support of that contention the Carrier directs attention to Awards 1289, 1645, 1806, 1811, 2012, 2137, 2145, 2146 and 2281 issued by your Board.

The Carrier respectfully requests that the instant claim be denied.

OPINION OF BOARD: The controlling facts of this case are disclosed by the Employees' exhibit No. 1 and the Carrier's exhibit "A," supra. Said exhibits are in substantial accord, except that the facts set forth in paragraph 3 of the Employees' exhibit are not admitted by the Carrier, although it does not deny the same. It appears that the claimant secured his position on May 25, 1933, and filed his claim on March 24, 1941, based upon increased duties required of him since July 1, 1933, specifically in 1936, 1937 and 1939.

By paragraph 3 of exhibit 1 the claimant seeks to bring into the consideration of the case the further fact that three days per month of the duties of a Chief Statistician and his assistant, highly skilled employees whose salaries were at the time \$192.00 and \$177.00 (now \$255.40 and \$207.60), respectively, were added to the position in question during the year 1930—three years before the claimant was employed. This showing was first made at the hearing before this Board on January 26, 1944.

The claim is predicated upon the following rule, contained in the effective Agreement of January 1, 1931:

"RULE 69. ADJUSTMENT OF RATES. When there is a sufficient increase or decrease in the duties and responsibilities of a position or change in the character of the service required, the compensation for that position will be properly adjusted, but established positions will not be discontinued and new ones created under different titles covering relatively the same class of work for the purpose of reducing the rate of pay or evading the application of these rules."

Claims based upon violations of the above rule have been sustained. See Awards 613, 626, 627, and 628.

The Carrier's most emphasized defense is that the long lapse of time between the accrual of the claim and its presentation, as disclosed by the foregoing summary of the facts, requires its denial. Reliance is placed upon that principle, not infrequently invoked by this Board, variously referred to as sleeping on one's rights, acquiescence, estoppel, laches, and limitations. Among the Awards in which some phase of the rule has been applied are Nos. 1289, 1606, 1645, 1806, 1811, 2137, 2146 and 2281.

We are not so much concerned with legal definitions as we are with the proper application of the established practice, although it may be well to note that the Supreme Court of the United States has recently declared that, "There is no federal statute of limitations applicable to unadjusted claims which the Adjustment Board may consider." (Order of Railroad Telegraphers v. Railway Express Co., No. 343, decided Feb. 28, 1943.) From the awards of this Board in which this subject has been considered we think the following conclusions may be deduced. Where one party, with actual or constructive knowledge of his rights, stands by and offers no protest with respect to the conduct of the other, thereby reasonably inducing the latter to believe that his conduct is fully concurred in and, as a consequence, he acts on that belief over a long period of time, this Board will treat the matter as closed, insofar as it relates to **past transactions**. But repeated violations of an express rule by one party or acquiescence on the part of the other will not affect the interpretation or application of a rule with respect to its **future operation**. Awards 1806 and 2137.

It seems to us that this case comes well within the spirit of the first part of the foregoing statement of the established practice. The controversy relates to a wage dispute as to past services. The employment began in 1933 but the claim was not made until 1941. A substantial part of the claim is predicated upon practices established as early as 1930—three years before the commencement of the employment. The character of the employment was such that it can hardly be supposed that the claimant was ignorant of his rights. The duties added during 1936, 1937 and 1939 were more than offset by relief from other duties.

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 employees involved in this dispute are respectively carrier and employees 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 carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1944.