

Award No. 4941
Docket No. CL-4825

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that; the Carrier violated and continues to violate the Clerks' Agreement:

1. When on January 1, 1946, it removed work covered by the Clerks' Agreement from the position of Claim Investigator "Personal Injuries" and assigned such work to the Chief Special Agent, an Official of the Company not covered by the Clerks' Agreement, or any other agreement, and

2. That the Carrier shall now be required by appropriate award and order of the Board to restore such work to the employees coming within the scope of the Clerks' Agreement, and compensate employees who lost pay and time due to this violation from January 1, 1946, until same is corrected.

EMPLOYES' STATEMENT OF FACTS: 1. The Agreement with the Carrier effective March 1, 1944, governing the hours of service, working conditions and rates of pay of all employees represented by the Brotherhood specifically embraces therein (Rule 2) position of Claim Investigator (Personal Injuries). This position, by terms of the Agreement, is excepted from the application of certain rules thereof, namely:

- Rule 4—Day's Work and Overtime.
- Rule 6—Starting Time.
- Rule 26—Promotions, Assignments and Displacements.
- Rule 28—Advertising Positions.
- Rule 34—Reducing Force.
- Rule 36—Exercising Seniority.

The Agreement aforementioned, effective March 1, 1944, has heretofore been filed with your Honorable Board and by this reference thereto is made a part hereof.

2. Prior to January 1, 1946, the position of Claim Investigator in the Chief Special Agent's Office was permanently assigned to Mr. Alfred Weber. A rate of pay of \$240.00 was attached to the position as of that date. The position is one embraced within Seniority District No. 4 as contemplated by Rule 22 of the Agreement. Mr. Weber's seniority dates from June 10, 1920 and his name so appears on the Employees' Seniority Roster effective as of the

The Carrier must at all times efficiently manage its business and increase and reduce forces as the requirements of the service necessitate. Your Honorable Board and other divisions of the Adjustment Board have so held on many occasions.

There have been many situations similar to this, such as, an increase in business at a small station manned by an Agent-Operator. When it becomes necessary to assist him, a clerical employe is hired. When the business is reduced, the Clerk is laid off and the work is again all done by the Agent-Operator represented by another organization.

The Carrier respectfully requests that the claim of the Employes be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Effective January 1, 1946, Alfred Weber, Claim Investigator (Personal Injuries), was appointed Chief Special Agent, a position excepted from the Clerks' Agreement. One S. W. Fender, an employe outside the scope of the Clerks' Agreement was appointed to the position of Claim Investigator vacated by Weber. The Carrier abolished the position of Claim Investigator on May 16, 1946, and assigned the remaining work of the position to the Chief Special Agent. It is the contention of the Organization that this constituted an improper removal of work from the Clerks' Agreement. The Carrier asserts that the investigation of personal injury claims is primarily the work of the Chief Special Agent and that the position of Claim Investigator was established to handle the excess work of the position. Carrier asserts that the number of personal injuries to be investigated decreased to such an extent that they could be handled by the Chief Special Agent and that it could properly abolish the position of Claim Investigator on the principle announced in Awards 2334 and 3211.

Immediately following the abolition of the position of Claim Investigator on May 16, 1946, the Organization claimed that the action of the Carrier constituted a removal of work from its Agreement and made the claim presently before us. On June 21, 1946, the matter was discussed in conference and on July 5, 1946, the claim was denied by L. G. Walker, Vice President—Operations and Maintenance, who was designated as the highest officer of the carrier to handle such matters at the time. No further action was taken by the Organization until May 19, 1949, when the Organization's General Chairman again undertook the handling of the claim and an appeal to this Board.

We direct attention to the fact that one of the general purposes of the Railway Labor Act, as stated therein, is "(4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Railway Labor Act, Sec. 2. While it is true that a time limit in which an appeal must be taken to this Board from an adverse determination by a Carrier is not stated in the Act, or in the agreement before us, it is contemplated that disputes arising under it shall be handled expeditiously. The parties are entitled to a reasonable time to appeal in the light of all the circumstances. In the present case the Carrier unequivocally denied the claim on July 5, 1946. For almost three years the Organization took no steps to bring the claim to this Board. The elapsed period exceeded that which could be said to be reasonable under all the circumstances shown. The Carrier had a right to assume after a period of approximately three years that the Organization had accepted the Carrier's determination of the issue. The purposes of the Act would be frustrated if disputes could be so held in abeyance and raised again at any future time when the chances of success might appear more favorable. It might be argued that the appeal attempted to be taken is from the denial of the claim on June 20, 1949, by M. E. Mayes, Superintendent of Personnel and the highest officer of the Carrier designated to hear such claims. If this is

the theory of the Organization the appeal would have been taken within a reasonable time but other reasons would exist which would defeat the claim. Such a situation would constitute a redocketing of a claim which had already been finally decided. There must be a time when a dispute will be deemed to be fully determined. Neither party will be permitted to refile claims once heard and decided. The purpose of the Railway Labor Act would be seriously restricted if such abortive procedure be permitted. The expeditious handling of claims and grievances, as required by the Railway Labor Act, requires that a final determination of a dispute by a carrier's highest officer designated to hear such matters becomes final unless an appeal is taken to this Board within a reasonable time thereafter. We are required to say that the denial of the claim on July 5, 1946, became final when the Organization failed to process it to this Board within a reasonable time thereafter.

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 there was no violation of the Agreement for which the Carrier is chargeable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.