Award No. 5096

Docket No. CL-5054

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that,

(1) The Carrier violated the Rules of the Clerks' Agreement when, effective June 1, 1948, it unilaterally and arbitrarily abolished the position of Day Agency Clerk, then occupied by Mr. G. C. Beall, salary $273.32 per month, six-day week assignment, hours 6:00 A.M. to 3:00 P.M., and the position of Night Agency Clerk then occupied by Mr. A. L. Stanfield, salary $280.32 per month, six-day week assignment, hours 4:00 P.M. to 1:00 A.M., and transferred the work of these positions to positions in the Yard office, Industry Yards, Atlanta, Georgia, a different seniority district and a different department, and that, therefore,

(2) Day Agency Clerk Mr. G. C. Beall and Night Agency Clerk Mr. A. L. Stanfield shall now be restored to their respective positions of Agency Clerks located in the Industry Yards office, Atlanta, Georgia and paid for all time losses since June 1, 1948, and that,

(3) Any and all other employes of either the Agency or the Industry Yard office seniority districts, which are Macon's Districts No. 4 and 7 respectively shall be paid for all wage losses sustained where they have suffered such losses as a result of the Carrier's action.

EMPLOYES' STATEMENT OF FACTS: For many years prior to June 1, 1948, from one to two Agency Clerks carrying seniority in Macon Division, Seniority District No. 4, have been employed in the Industry Yard office Macon Division Seniority District No. 7 to perform all agency work and prepare all agency forms at that location. This work consist of:

Preparation Form 172 —On line passing report
Preparation Form 172-B—Off line passing report
Preparation Form 60 —Cars delivered to connections Record for Commercial Agents
Preparation Form 760 —Train consist.
Preparation Form 61 —Cars received from connections

$6,270.26, whereas, if he had stayed on the job he occupied when his position was abolished, he would have earned $5,682.73, a difference of $587.53 in excess of the amount he would have earned had his job not been abolished. Mr. Stanfield, for the same period has earned $5,652.87 while he would have earned, had he stayed on the job he held when it was abolished, $5,822.73 or only $169.86 in recess of what he would have earned had his job not been abolished.

POSITION OF CARRIER: The Carrier denies that the work of the Agency Clerks was transferred to the positions in the Yard Office at Industry Yards. The Carrier submits that it has clearly shown that no work has been transferred from the Agency Clerks to the Yard Clerks, and that the work formerly performed by the Agency Clerks was simply abolished by utilizing existing reports prepared by the Yard Clerks and making slight modifications in the reports prepared by them.

The Carrier further submits that it should not be required to revert to the outmoded and antiquated method of requiring three separate and distinct Passing Reports containing substantially the same information of solid cars passing through its junction points, and if it is forced to reinstate the Agency Clerks, it would find itself in the somewhat awkward position of employing and carrying personnel on its payrolls who would have absolutely no duties whatever to perform. This situation, we believe, would be untenable and inexcusable in the face of continued demands for efficient operations of the railroads.

Had the carrier discontinued the rendition of Forms 172-B, 60, and 61 TW which were formerly prepared by the Agency Clerks and held them in the service to prepare the new consolidated Forms 188-LA which have always been prepared by Yard Clerks, we no doubt would have received a similar claim from the Yard Clerks as now is before us for the Agency Clerks.

The Carrier submits that there has been no violation of the Clerks' Agreement in that no work has been transferred from one seniority district to another, as the work formerly performed by the Agency forces, was a duplication of that performed by the Yard forces and this duplication has been eliminated.

We are confident first, that the Board will dismiss this claim for lack of jurisdiction on account of non-compliance of Rule 29 (d) and second, because there was no violation of the Clerks' Agreement in discontinuing the work performed by them.

(Exhibits not reproduced.)

OPINION OF BOARD: The Board's authority to rule on the merits of this claim is challenged by the Carrier on the grounds that the dispute was not referred to the Board within one year from the date of final handling on the property, as provided by Rule 29 (d) of the current agreement which reads:

> "All disputes, if not settled on the property, shall be referred to the appropriate tribunal provided by law, within one (1) year from the date of the decision of the highest official designated, or they are barred."

There is no controversy about this Division of the National Railroad Adjustment Board being the "appropriate tribunal provided by law" to which unsettled disputes such as the one in question may be referred. Neither is it disputed that the Organization now petitions the Board after more than one year has elapsed from the date of the decision of the "highest official designated." Clearly then, the claim is barred if the foregoing rule is applicable to disputes of this character. The language of the rule is clear and not subject to interpretation. It would seem applicable for this is an unsettled dispute and the rule provides that "all disputes" in that category shall be referred

to the Board within one year from the date of final handling on the property, if there be intention to invoke the Board's jurisdiction.

Nevertheless, language otherwise clear is enshrouded in the possibility of more than one meaning by the contention of the Organization that the rule pertains only to matters of discipline and is not a so-called "cut off" rule applying to claims for compensation flowing from the violation of other rules of the agreement.

The Organization, relying on Awards 1403, 1839, 2611, 2925, and 3095 holds that the placement of the writing in question as a separate paragraph under Rule 29 entitled "Investigation and Hearings" applies only to the context of that particular rule and bears no relationship to the recovery of compensation due employes under the other rules of the applicable agreement.

Noting that Award 1403 is dated April 24, 1941 and that the current agreement between the parties is effective September 1, 1944, it is conceivable that the Organization had that award in mind at the time it agreed to incorporate the disputed language in its agreement. The Carrier, however, disclaims any intention, expressed or implied, during the course of negotiations, to be bound by the opinion of this Board in the last cited award. As a general proposition, though, it might be said that the Carrier was chargeable with notice that the rule here in question, as placed in the agreement, was subject to such interpretation if the foregoing award is clearly applicable.

We note that Award 1403 is controlled by Award 1060 to which a vigorous dissent is registered on the basis of a conflict with earlier awards. We are satisfied from our own examination that Awards 1403 and 1060 are insufficient for holding that the Carrier was bound during negotiations by the rules of construction promulgated therein. We find that Award 1060 is authority for holding that a claim lodged under the "overtime and call rules" of the agreement is not subject to a rule now commonly designated in current agreements as an "unjust treatment" rule. In Award 1403 the rule in question was in fact entitled "Unjust Treatment". Were we here concerned with Rule 32, which is the "unjust treatment" rule in the agreement between the parties to this dispute, and which is in language similar to the rules cited in Awards 1403 and 1060, there would be greater merit to the Organization's position. At best, the cited awards are only authority for the general proposition that the Board must consider language according to the manner used and according to placement in the contract, when construing ambiguous terms of the agreement, and in ascertaining the real intent of the parties where it is not otherwise clearly expressed. Neither award is applicable where the Board is confronted with clear and unambiguous language. The other precedents cited and urged by the Organization have been considered and, without laboring the points of distinction, we hold they do little more than reaffirm the aforementioned awards.

In the main, Board precedents on which the Carrier relies, concern cases where claims were not filed within time or appeals were not properly prosecuted on the property. The cited awards are authority for the general proposition that failure to prosecute claims in strict accordance with the procedural rules of the agreement is fatal. But those awards also involve rules which are not comparable, and our attention has not been directed by either party to a case which is found controlling on the facts and rule at issue. Thus, we are left to our own resources to find a proper basis for interpreting and construing the language of the parties.

We start with the observation that we are not disposed to seek for ambiguity where none exists. As we said earlier, we find the language of the rule clear and unambiguous. Therefore, we must give to it the full import of its meaning and may not resort to pretext to defeat the true meaning of the language used.

In determining whether or not there is such an ambiguity as calls for interpretation, the whole instrument must be considered and not an isolated

part. Therefore, we are not persuaded that the Organization is on solid ground when it urges the view that the language under investigation should be considered only in connection with Rule 29. It is elimentary that where dispute exists as to the proper interpretation and application of an agreement, the intention of the parties is to be collected from the entire agreement and not from detached portions.

Accordingly, the entire agreement of the parties comes under close scrutiny and from an examination we find that Rule 29, headed "Investigation and Hearing" is closely related to Rule 30, "Appeals and Further Hearings"; Rule 31, "Representation"; Rule 32, "Unjust Treatment"; Rule 33, "Exoneration"; and Rule 34, "Date of Suspension".

The arrangement and placement of the rules in the agreement admittedly leave much to be desired in the way of clarity, but such criticism is directed more to form than to substance. It is not correct to say that Rule 29 involves only discipline of employes. The rule governs investigation and hearing of controversies arising on the property just as Rule 30 governs appeals and other hearings. While 29 (a) and (b) involve discipline of employes, paragraph (c) concerns disputes involving money payments and (e) provides for furnishing records of the investigation and appeal. Rule 31 allows representation at the investigation and hearing provided by Rule 29, and the employe claiming unjust treatment under Rule 32 has resort to Rule 29 for investigation and hearing. Rules 30 to 34 inclusive deal as much if not more with discipline of employes than does Rule 29. Though such rules are set out separate and apart from Rule 29, we do not think it would be contended for a minute that they bear no relationship to Rule 29. It is not believed any more proper to say that paragraph (d) is limited to the context of Rule 29 than is (e) which definitely gives the employes copies of all statements made a matter of record on appeals and further hearing under Rule 30. Thus, we believe it is conclusively demonstrated that Rule 29 and its components cannot be isolated from the other rules of the agreement. As to the propriety of the language in question being incorporated in Rule 29, it could be argued that as a limitation on claims, it is as much a part of that rule as is paragraphs (b) and (c) which too, deal with time limits governing procedural matters.

By reason of the above and foregoing we are lead to the inescapable conclusion that nominal and conventional headings in labor agreements and the arrangement of rules thereunder are essentially matters of form and not of substance. Since substance rather than form ordinarily controls the construction and interpretation of agreements in writing the Board should not hold language ambiguous which is not so even though it is ineptly placed in the agreement.

It seems crystal clear from the language employed that the parties intended that "all" disputes not settled on the property and for which the law gives recourse to this Board, must be presented within one year from the date of decision by the highest official designated, or be barred. If the parties had intended to bar only disciplinary cases it would have been easy and simple for them to have said so. Instead they use language which is most inclusive when they say, "all disputes", and the Board may not ignore words of such common understanding and usage to relieve either party from the consequences of their own chosen language.

Therefore, this claim must be denied for lack of jurisdiction if the integrity of the agreement is to be upheld.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934; and

The employes having failed to comply with Rule 29 (d), the claim must be dismissed for lack of jurisdiction.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

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