

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY
Wm. Wyer, Trustee

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The Carrier violated the Clerks' Agreement when it paid a rate of \$175.00 per month instead of the minimum clerical rate of \$244.17 per month, to Miss Irene Breten and Miss Ruth Smedes, and
2. The Carrier violated the Clerks' Agreement further, when it failed and refused to assign senior qualified employees, to type annual card passes for the year 1950-1951, in the office of Chief Operating Officer, and
3. The Carrier shall pay Miss Irene Breton and Miss Ruth Smedes, the difference between the rate of \$175.00 per month and the minimum clerical rate of \$244.17 per month, each day assigned, and
4. The Carrier shall pay Miss Ann G. Chambers and Miss Valencia M. Cardone, or other affected employees, who were senior in standing on the General Office Roster and unassigned, at the rate of \$244.17 per month, each day Miss Irene Breton and Miss Ruth Smedes were assigned to work in the office of Chief Operating Officer.

EMPLOYEES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective July 1, 1945, covering Clerical, Other Office, Station and Storehouse Employees between this Carrier and this Brotherhood. This Rules Agreement will be considered as a part of this Statement of Facts. Various Rules and Memorandums thereof may be referred to from time to time without quoting in full.

On March 1, 1948, Mr. D. E. Smucker was appointed to the position of General Manager of the Long Island Rail Road Company, separating the General Manager's position from the Pennsylvania Railroad. A new office was created at Jamaica, N. Y., for the General Manager and a mutual agreement was reached whereby Mr. Charles Roth, a Clerk in the office of the Passenger Train Master was assigned to the position of Secretary to the

Division, N.R.A.B. on December 19, 1950, you have presented an entirely new claim, which, under the provisions of Rule 4-D-1, may not now be entertained or allowed." (Emphasis supplied).

POSITION OF TRUSTEE: Rule 4-D-1 (Claims for Compensation) of the applicable Rules' Agreement, provides that claims for compensation in order to be valid, must be filed with the employee's immediate supervisor, within 90 days from the date the employee receives his pay check for the pay period involved. Claims which are not filed within the prescribed time limits **"will not be entertained or allowed"**. (Emphasis supplied).

Therefore, since it has been established that the service upon which this claim is predicated was performed by Miss Breton from November 7th, 1949 to February 28th, 1950, and by Miss Smedes from November 21st, 1949 to January 1st, 1950; and that the portion of the claim on behalf of Miss Ann Chambers and Miss Valencia M. Cardone is likewise predicated upon an alleged violation of the Agreement, which occurred during the period November 7th, 1949 to February 28th, 1950; and as the instant claim was not presented to any Officer of this Carrier until January 15th, 1951, it may not now, in accordance with the specific provisions of Rule 4-D-1 of the applicable Rules' Agreement, be entertained or allowed.

Accordingly, it is the position of the Trustee that your Honorable Board is obligated to dismiss this claim on the basis that it was not handled on the property in accordance with the provisions of Rule 4-D-1 of the applicable Rules' Agreement.

In the event your Honorable Board elects to ignore the fact that this claim has not been handled on the property in accordance with the provisions of Rule 4-D-1, and chooses to proceed to consider it on the alleged merits, then the Trustee reinstates each and all of the arguments enunciated in our submission filed with your Honorable Board in connection with the case covered by Docket CL-5368, Award 5179, copy of which submission is attached hereto as Trustees Exhibit "B".

(Exhibits not reproduced).

OPINION OF BOARD: The Organization contends the Carrier has violated the current Clerks' Agreement, by paying a rate of \$175.00 per month, instead of the minimum clerical rate of \$244.17 per month to employees Irene Breton and Ruth Smedes. It is alleged Carrier also has violated the current Agreement by its failure to assign senior qualified employees to type annual card passes for the year 1950-1951, in the office of Chief Operating Officer. That as a penalty for such violation, Carrier should be required to pay employees Breton and Smedes, for each day assigned, the difference between \$175.00 per month and \$244.17, and in addition shall pay Miss Ann G. Chambers and Miss Valencia M. Cardone, or other affected employees, senior in standing on the General Office Roster and unassigned at the rate of \$244.17 per month, for each day Irene Breton and Ruth Smedes were assigned to work in the office of Chief Operating Officer.

The Organization is emphatic in its contention that the subject matter contained in the claim in Docket No. CL-5368, and the present claim is a continuation or the same as now before us. We have been cited to many awards by the Organization, to the effect that a claim may be amended from time to time that would not bring about a variance that would deprive the Board of the authority to hear and determine it. We are heartily in accord with such awards and the reasoning of the Board. But in the instant case, such awards do not apply, as we have an entirely different situation, in that the claim in Docket No. CL-5368 was disposed of by the Board, based on a letter from the Grand President of the Organization to this Board, dated December 19, 1950, and bearing stamp as received December 20, 1950, requesting that Docket No. CL-5368 be withdrawn and to permit further negotiation and handling on the property. Following receipt of the letter referred

to the Board, this Division, made its Award No. 5179, as of December 21, 1950, dismissing said cause, which award became final.

On January 15, 1951, the Organization filed the present claim with the Manager of Personnel for the Carrier. It is the opinion of the Board that the claim herein presented is an entirely new claim, and bears an entirely different claim number, "CL-6309", and that the first claim, "CL-5368", was disposed of by this Board when it made its award designated as Award No. 5179, which has become final under the rules and procedure of the Board. Therefore, we will not consider the claim as made in Docket No. CL-5368, Award No. 5179, in determining the issues before us.

The matter before us is a claim for difference in pay between a rate of \$175.00 per month and \$244.17 per month for certain named, or other affected employees.

Without going into detail of the argument advanced by the parties, we conclude that any result we would arrive at as to the facts would, of necessity, be governed by Rule 4-D-1(a), which is as follows:

"4-D-1 (a). Claims for compensation alleged to be due, may be made only by an employee or by the 'duly accredited representative' as that term is defined in this Agreement, on his behalf, and must be presented, in writing to the employee's immediate Supervisor within ninety (90) days from the date the employee received his pay check for the pay period involved, * * *."

From the record we find the specific dates of work performed by all the claimants was between November 7, 1949 and February 28, 1950. This claim was not filed with the Carrier until January 15, 1951, approximately eleven months from the last date any of the work was performed. Claim should therefore be denied.

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 claim should be denied in accordance with the foregoing Opinion of Board.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of June, 1953.