

Award No. 6229
Docket No. CL-6310

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 provisions of the Clerks' Agreement when it filled the position of Time Table Clerk by assigning an employe who has no seniority standing on the Clerks' Seniority Roster, and
2. The Carrier shall assign a Clerk who has seniority rights under the Clerks' Agreement and shall pay all affected clerks monetary losses, retroactive to July 16, 1949, the date H. C. Paulssen, Special Duty Conductor was assigned to the position of Time Table Clerk.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement, effective July 1, 1945, covering clerical, other Office, Station and Storehouse Employes, between this Carrier and this Brotherhood. The 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.

The position of Time Table Clerk is a position included in and covered by the Scope Rule of the Clerks' Agreement.

Prior to July 1, 1947, the position of Time Table Clerk was filled by J. C. Horton, who had a clerical seniority date of June 6, 1910. Mr. Horton was assigned to this position at the time the present agreement was made effective on July 1, 1945.

On July 1, 1947, because of retirement of Mr. Horton, the position of Time Table Clerk became vacant. The Carrier appointed a Yard Master, who held no seniority rights under the Clerks' Agreement. Protests were made by this Brotherhood from time to time that clerical work should be

clerical seniority for a period of two years (July 9, 1949 to July 16, 1949) immediately prior to the appointment of Mr. Paulssen. And, therefore, the instant claim was being prosecuted as protest against the individual appointed to this position rather than against the fact that Management is privileged to appoint, whoever it chooses to an "excepted" position.

(e) The Carrier has shown that this claim was outlawed by reason of the General Chairman having failed to appeal from the undersigned's denial of it (December 28, 1949) until practically two years later, December 12, 1951. See Award 4941, this Division.

(f) The Carrier has shown that regardless of any other consideration that portion of this claim praying for compensation for unnamed claimants is improperly before your Honorable Board since it has not been handled on the property as required by the provisions of Rule 4-D-1 (Claims for Compensation).

(g) Finally, the Carrier has shown that the primary issue presented for adjudication in this controversy is now non-existent since the position of Time Table Clerk was abolished May 31, 1952.

Therefore, in view of the facts presented and for the reasons stated, this claim should be declined.

(Exhibits not reproduced).

OPINION OF BOARD: The subject matter and facts pertinent to this case are covered in the Joint Statement of Agreed Upon Facts, dated November 9, 1949.

It is the contention of the Organization the Carrier violated the current Clerks' Agreement, as set out in Item 1, Statement of Claim, as follows:

"1. The Carrier violated the provisions of the Clerks' Agreement when it filled the position of Time Table Clerk by assigning an employe who has no seniority standing on the Clerks' Seniority Roster."

Item 2 of the claim contends:

"2. The Carrier shall assign a Clerk who has seniority rights under the Clerks' Agreement and shall pay all affected clerks monetary losses, retroactive to July 16, 1949, the date H. C. Paulssen, Special Duty Conductor was assigned to the position of Time Table Clerk."

As of July 16, 1949, the Carrier assigned one H. C. Paulssen, Special Duty Conductor, to the position of Time Table Clerk, Paulssen held no seniority rights on the Clerks' Seniority Roster. It is also agreed the position in question is included in Exception 3 to the Scope Rule in the current Agreement between the parties. Shortly thereafter, the Clerks presented the claim which is now before us, and the record shows that the said claim was declined by the Carrier, through its Manager of Personnel, by letter to the General Chairman on December 28, 1949, who is the highest designated officer having jurisdiction of the matter in question. The record clearly shows the Organization took no further action until December 12, 1951, when the General Chairman notified the Carrier of its rejection and the denial, and gave notice of appeal to this Board. This action by the General Chairman in filing and notifying the Carrier, approximately two years after denial, of their intention to appeal to this Board, is in our opinion an unreasonable time in which to take such further action, and certainly is not in compliance with the Railway Labor Act. See 2, "General Purposes", as set in (4) and (5) of said section. There is nothing contained in the Act nor in the current Agreement which puts a time limit on the filing of an

appeal to this Board from any denial of a claim by the Carrier, but such appeal must be prompt and orderly. Certainly the parties are entitled to a reasonable period of time in which to perfect an appeal to this Board, but a period of approximately two years in which the Organization elected to further assert its rights to this Board is unreasonable, and not within the purview of the provisions of the Railway Labor Act, and said claim should be denied. We are in accord with Award 4941, Carter Referee.

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 herein; and

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

AWARD

Claim denied in accordance with the foregoing Opinion and Findings.

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.