Award No. 6420
Docket No. CL-6458

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAILROAD COMPANY, DEBTOR
Wm. Wyer, Trustee

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

1. The Carrier violated and continues to violate the provisions of the Clerks' Agreement, when it failed and refused to restore Station Cleaners duties to Station Cleaners and failed and refused to restore Baggagemen duties to Station Baggagemen, and

2. The Carrier shall restore all Station Cleaner work to Station Cleaners and shall restore all baggage work to Station Baggagemen, and

3. (a) The Carrier shall pay each Station Baggagemen additional pay at pro-rata rate of his regular position for all time required to do cleaners' work, and

(b) Shall pay each Station Baggageman under the provisions of the Call Rule, for the actual number of hours each day a Station Cleaner suspends work on his regular assignment, Seniority District No. 6, to perform work belonging to employes in Seniority No. 4, retroactive to April 3, 1948, and

4. (a) The Carrier shall pay each Station Cleaner additional pay at pro rate rate of his regular position for all time he is required to do baggage work and

(b) Shall pay each Station Cleaner under the provisions of the Call Rule, for the actual number of hours each day a Station Baggageman suspends work on his regular assignment, Seniority Distirct No. 4, to perform work belonging to employes in Seniority District No. 6, retroactive to April 3, 1948.

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the claimants in this case holds positions and the Long Island Rail Road Company, hereinafter referred to as the Brotherhood and the Carrier, respectively.

pointed out, was subsequently and completely disposed of by an Agreement with Mr. Clarke and his Committee on June 27, 1952. Obviously, therefore, if for no other reason, the General Chairman's claim of June 27, 1951 would be invalid since it was predicated on our alleged non-compliance of Award 4987 of this Division and that issue was completely disposed of by the Agreement of June 27, 1952 with Mr. Clark and his Committee.

To summarize, it is the position of the Trustees, that:

(a) Your Honorable Board is precluded from entertaining the claim filed by Grand President Harrison on August 29, 1952 because that claim was not handled on the property in accordance with the provisions of the Railroad Labor Act as amended, specifically Section 3, First (i) thereof.

(b) That even if Mr. Harrison's claim of August 29, 1952 and the General Chairman's claim of June 27, 1951 were to be considered one and the same—and there is no basis for such action—this claim could not be entertained by your Honorable Board because the claim filed on June 27, 1951 was not handled on the property in accordance with the provisions of Section 3, First (i) of the Railway Labor Act, as mended.

(c) That regardless of any other consideration, this claim is invalid because it is too vague and not sufficiently specific to permit a determination of its alleged merits. See Awards 906, 1629, 2124, 2125, 4372, 5150, 5384, 5562—this Division.

(d) That if all of the foregoing defects were to be surmounted, this claim would still fail because it was predicated on an alleged non-compliance with the provisions of Award 4987 of this Division which dispute was resolved by an Agreement entered into on June 27, 1952 with the Committee of the Co-Operating Railway Labor Organizations.

For the reasons stated and the evidence adduced, this claim is without merit and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: In Docket Number CL-4904, this Division with Referee Robert O. Boyd, considered a claim by the Clerks' Organization that the Long Island Rail Road had violated the Agreement "when it abolished positions or reassigned work" at various places including Great Neck, New York. Award No. 4987 was adopted by the Division August 1, 1950, disposing of the case by sustaining Claims 1 and 3. However, the Award stated "The claim therefore in so far as it relates to the positions of Baggagemen and Station Cleaners at Great Neck should be remanded to the property to determine whether there were reassignments of thes positions since the effective date of the agreement."

The present file discloses various conferences were held between the parties in making the Award effective, and there is shown Carrier's Exhibit A, a letter dated June 27, 1952 to Mr. Jesse Clark offering terms for settlement on the particular named **abolished** positions. This letter fails to mention Great Neck. Mr. Clark's reply, dated July 1, 1952, states "You agreed to pay to the employes involved which, I understand, will dispose of that portion of the claim placing the award in effect. Accordingly I am closing my file."

There was a joint check made by Mr. Wysong and Mr. Richardson February 29, 1952, which is in the record as Petitioner's Exhibit A. This check definitely establishes various changes in the pay given station cleaner Dewitte Powe for his work at Great Neck in the year 1947 and then beginning March 30, 1948 and thereafter he was paid 4 hours at baggageman's rate and 4 hours at station cleaner's rate.

During the negotiations concerning Award 4987 the Carrier's Personal Manager took the position that the denial of Claim 2, and the language of the Opinion concerning the performance of work incidental to the primary job, were factors controlling the question at Great Neck. We do not agree with this position. The Opinion language which explains the denial of Claim 2 is actually the following:

> "This Board is without authority to require the Carrier to reestablish any position; for the Carrier may be able to comply with the Agreement by assigning the work in a manner that will be in conformance with the Agreement. Awards 4044, 3906."

The claim of rule violation in reassignment of work, as it relates to Great Neck, was spelled out exactly in the next paragraph of Award 4987:

> "The agreed statement of facts does not show that a position was abolished at Great Neck. In fact, there is nothing to show that the situation described here has not existed since the effective date of the agreement. There is no provision in the contract to require the Carrier to reassign the work of positions that were in existence at that time so long as they remained unchanged. The claim, therefore, in so far as it relates to the positions of Baggageman and Station Cleaners at Great Neck should be remanded to the property to determine whether there were reassignments of these positions since the effective date of the Agreement."

It is with this sole question that we are presently concerned. The Carrier now argues that instead of progressing the instant claim the parties should have obtained an interpretation of the old Award. The Brotherhood replies that all that was required was application of the Award; not an interpretation. We note in passing that under Sec. 3, First (m) of the Railway Labor Act that the Division upon request of **either** party shall interpret the Award.

We are of the opinion that Mr. Clark's acceptance of the settlement of "that portion of the claim placing the award in effect" did not dispose of the question at Great Neck, which had been remanded to determine whether there were reassignments since the effective date of the Agreement. The docket before us is silent on whether Great Neck was considered in the discussion of June 27, 1952. If the Brotherhood did bargain away its rights at Great Neck in order to obtain settlement of other questions, surely the Carrier would have produced proof of the fact. Instead we are asked to assume that Mr. Clerk's acceptance closed the entire matter in the letter wherein he refers to a portion. We cannot make that assumption.

The present claim is opposed by the Carrier on the additional ground that the dispute was not properly progressed on the property. The Carrier states in its submission, "Trustee's Statement of Facts. On Sept. 2, 1952 the undersigned received a copy of a letter dated . . . . Mr. Harrison's letter . . . . was the first notice this Carrier received of the eisxtence of this claim." Yet in "Position of Trustees" the Carrier shows that on June 27, 1951 the Brotherhood Chairman made a statement of claim in the same language as in our instant case, with the one notable exception that reference to Award 4987 in the statement made on the property is omitted in this submission.

Under these facts we do not believe that the Carrier can claim ignorance and demand the benefit of procedural rules governing the handling of claims on the property. Procedural provisions are established to assist in orderly disposition of pending matters. They should not be invoked lightly or applied narrowly to defeat the end they were aimed to achieve.

Sec. 3, First (m) of the Railway Labor Act states as law that "The awards of . . . . the Adjustment Board . . . . shall be final and binding upon both parties . . . . except insofar as they shall contain a money award."

With this provision in mind and being of the opinion that the alleged violation here covers the same time, place, parties, employes and practices

as were considered in Award 4987 and remanded to the property, and which still remain unsettled, we adhere to the Opinion and Award of that case. We reach this conclusion on the further reasoning that whereas precedents should always have notice and support if in point, therefore where an actual claim has been decided, and re-arises for lack of application by either party, it is final and binding and it cannot be overthrown without a showing of just cause. Such is not the case here and we conclude that the present claim should be sustained.

From the joint check in evidence we determine that Station Cleaner Powe of Great Neck, New York, was required to work in more than his own seniority district, usually about 4 hours per day, since sometime in 1947, for which he was paid at baggageman's rate and we find that the third trick baggageman worked an average of 2½ hours daily at station cleaners' work and was paid at baggageman's rate while so engaged.

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:

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Scope and Seniority Rules of the Agreement were violated by the Carrier.

That Station Cleaner Powe was assigned outside his seniority district since the effective date of the Agreement and was paid therefor at baggageman's rate.

That the third trick baggageman was assigned outside his seniority district since the effective date of the Agreement and was paid therefor at baggageman's rate.

That Station Cleaner Powe should be paid additionally at his regular rate a sum equal to all the hours he was required to do baggage work since April 3, 1948.

That the affected third trick baggageman should be paid additionally at his regular rate a sum equal to all the hours he was required to do station cleaners' work since April 3, 1948.

AWARD

Claim sustained per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 30th day of November, 1953.