

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**

SEABOARD AIR LINE RAILROAD COMPANY

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

(1) That the Carrier violated and continued to violate the Rules of the Clerks' Agreement at Hermitage (Richmond), Virginia, when on Sunday, February 25, 1951, and subsequent Sundays, Holidays and before and after assigned hours on other days, as shown by dates on Employees' Exhibit B, they permitted and required employees not covered by said Agreement to perform work on such dates that was assigned to and performed by Clerical Employees during the assigned hours of their work week; and

(2) That, as a penalty for the violation of the Agreement, Clerk M. J. Arrighi be compensated for the "dates" and "hours" shown as Claimed on Employees' Exhibit B at the time and one-half rate of his position, plus subsequent general wage increases.

EMPLOYEES' STATEMENT OF FACTS: Prior to September 1, 1949, there was a position designated as AAR Clerk at Hermitage (Richmond), Virginia. This position was assigned a work week of Monday through Saturday with Sunday off. It was a six day position. The AAR Clerk's position became vacant and was advertised for bid on January 26, 1949, as evidenced by Employees' Exhibit C. Attention is directed to the fact that this bulletin shows only one principal and preponderant duty and that is, "writing up repairs to equipment". This required the AAR Clerk to make the original detailed account on AAR Billing forms of the labor and material used to repair freight and passenger cars in accordance with the "Code of Rules" as adopted by the Association of American Railroads. Rule 7 of this Code provides that, "When repairs are made to a foreign car (except as otherwise provided in Rule 108), or to any car on the authority of a defect card, the original record of repairs shall be written at the car on billing repair card." This duty was assigned to and performed by the AAR Clerk at the Car at the time such repairs were made.

Clerk M. J. Arrighi, hereinafter referred to as Claimant, submitted a bid on this position and same was awarded to him on February 2, 1949,

within two years from the date of said officer's decision such grievance or claim disposed of on the property or proceedings for the final disposition thereof are instituted by the employee or his duly authorized representative and such officer is so notified."

The claim of Clerk M. J. Arrighi was denied by Director of Personnel, who is Carrier's highest officer designated by the Company to handle grievances and time claims, in letter to General Chairman Younger dated June 8, 1951. A copy of this letter is attached hereto and identified as Carrier's Exhibit "A." The claim was not disposed of on the property and proceedings for the final disposition thereof were not instituted by the employee or his duly authorized representative and the Director of Personnel notified until September 23, 1953, or two years, three months, fifteen days after the claim was declined by the Director of Personnel.

No agreement was made extending the two-year period prescribed in Rule 36(b). Rule 45 of the current agreement, effective August 1, 1945, provides for extension of time limit by mutual agreement but no request was made upon the Carrier for an extension. Rule 45, reads as follows:

"The time limits provided in this Article IV may be extended by mutual agreement."

POSITION OF CARRIER: The claim of Clerk Arrighi, not having been progressed to the Adjustment Board within two years from the date of the Director of Personnel's letter declining the claim and no agreement having been made to extend the two year period, it is the position of the Carrier that under Rule 36(b) the Director of Personnel's declination of the claim on June 8, 1951 became final and binding on June 8, 1953, and that the claim is barred from appeal to the Board.

All data presented has been made known and available to the duly accredited representative of the organization.

(Exhibits not reproduced.)

OPINION OF BOARD: The Organization made claim for the improper use of employees not covered by the Clerks' Agreement at Hermitage (Richmond), Virginia, on Sunday, February 25, 1951, and subsequent Sundays, holidays, and before and after assigned hours on other days. On June 8, 1951, the highest officer designated by the Carrier to handle grievances, declined the claim. The claim was not disposed of on the property and proceedings were not instituted for the final disposition thereof until September 23, 1953. The Carrier contends the claims were barred by the provisions of Rule 36 (b), Supplemental Agreement effective December 15, 1950, which provides:

"Decision by the highest officer designated by the Company to handle grievances and time claims shall be final and binding unless within two years from the date of said officer's decision such grievance or claim is disposed of on the property or proceedings for the final disposition thereof are instituted by the employee or his duly authorized representative and such officer is so notified."

The Organization clearly failed to comply with the foregoing rule. In his letter of June 8, 1951, the highest officer designated by the Carrier to handle grievances and time claims advised the General Chairman in part as follows: "Therefore, the claims are accordingly declined, but if it is your desire to discuss it further, I offer no objections." It is plain that the General Chairman was advised that the claim was denied. The rule contemplates further handling on the property, including conference as required by the Railway Labor Act. The Organization has two years in which to effect a settlement, or in case of failure to settle the dispute on the property, to bring the dispute to this Board by giving notice to such officer of the Carrier. The rule does not contemplate two years from Carrier's last declination of the

claim. It means that the Organization has two years to progress the claim after the Carrier has declined to adjust it. This the Organization did not do and the Carrier's declination of June 8, 1951, has become final.

The Organization relies on Award 6298. The question there determined was the scope of the claim made. The question here is a different one. The question here is whether the claim, even though not a continuing one, was prosecuted within the time limitations of the Agreement. It clearly was not and the claim must 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 the claim is barred by lapse of time extending beyond the cut-off rule.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois this 26th day of May, 1955.