

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Horace C. Vokoun, 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 that the Carrier violated the Rules and Provisions of the Clerks' Agreement:

(1) On June 27, 1955 when it withheld Ticket Office Clerk-Steno A. D. Estill from service pending formal investigation and dismissed him from Carrier's service on July 21, 1955, on charges not proven by investigation held on July 7, 1955, and

(2) By permitting and/or requiring an official, designated as one to whom appeal might be made, to participate in the investigation and give evidence against Claimant thereby nullifying Claimant's right of appeal to him.

(3) When it changed the corporate titles of officials stipulated in the Agreement as those to whom appeals should be made and failed to notify employees as required by Rule 87 of said Agreement.

(4) That, A. D. Estill be returned to service and paid for all time lost on June 27, 1955, and subsequent thereto until re-instated, at the rate of the position from which discharged as requested on page 43 of the formal investigation. (Employees' Exhibit A)

OPINION OF BOARD: On June 24, 1955, the Carrier advised the claimant that he was being withheld from service effective the following day and that a formal investigation would be held on July 7, 1955. The charge against him contained four parts, the first three of which were specific instances of inefficiency and a disregard of instructions, the fourth alleging general inefficiency and lack of cooperation.

The hearing was held as scheduled and the Claimant was represented by the Division and Local Chairman.

During the hearing Mr. R. H. Williams, Local Chairman, placed the following in the record:

"While we are awaiting Mr. Graffin I would like to go on record in stating as Mr. A. D. Estill's representative, and Local Chairman of the Brotherhood of Railway Clerks, request that Mr. Estill be paid for all time lost since being removed from his position, and that he be returned to service on his position as Ticket Office Clerk-Stenographer, and that he be treated as a human being and Mr. Carter be so instructed, and further, as I, Local Chairman of this Lodge be furnished with three copies of the transcript of this investigation."

The instant parties are part of and signators to an agreement dated August 21, 1954, which was negotiated under the following circumstances:

"WITNESSETH:

"WHEREAS, on or about May 22, 1953 certain proposals were served on the carriers parties hereto by the organizations parties hereto on behalf of employes represented by such organizations and

"WHEREAS, within thirty days following May 22, 1953 certain proposals on behalf of certain of the carriers parties hereto were served on certain of the employes of said carriers represented by the organizations parties hereto; and,

"WHEREAS, a hearing was conducted by a Presidential Emergency Board (No. 106) and said Board on May 15, 1954 filed its report together with its findings and recommendations with the President of the United States:

"NOW THEREFORE IT IS AGREED: * * *"

"ARTICLE V--CARRIERS' PROPOSAL NO. 7

"Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances.

"This proposal is disposed of by adoption of the following:

"The following rule shall become effective January 1, 1955:

"1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. * * *"

Addendum 15 of the Master Agreement, August 1, 1945 provides that in the Passenger-Traffic Department, "Grievances of claims will be handled first with immediate superior, and appeals in connection therewith through the same channel."

By letter dated November 1, 1955 the Carrier raised objection that the claim was not presented "in writing by or on behalf of the Claimant to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence on which it is based."

The Organization in answer states:

"This is absurd and clearly indicates that Carrier has not read all of the investigation. * * *"

The Statement placed in that record by Mr. Williams (quoted above) is recited and then the following:

"Minutes of investigation recorded by Soundsciber Machine."

"Transcribed by W. R. Goodson, Secretary to Division Superintendent, Carolina Division, Savannah, Ga."

"Claimant's immediate superior, Mr. Carter was present at the investigation and heard the above quoted claim as dictated into the recording machine by Chairman Williams. He received a typewritten copy of the investigation prior to July 21, 1955, which incorporated the above claim as his letter to Claimant of July 21, 1955, dismissed him from the service on charges he contended were 'proved in the investigation' of July 7, 1955. Therefore, the claim was presented on behalf of Claimant in writing to his immediate superior within the time limit. The records previously shown are proof that the claim was subsequently progressed to officers of the Carrier authorized to receive same within the time limits stipulated in the Agreement."

In Award No. 40 of Special Board of Adjustment No. 170 in which case (Clerks vs. Illinois Central Railroad Company) the employes were claiming an award because of the alleged failure of the Company to deny the claim within the 60 day time limit in Article V, the Carrier urging that the claim was not properly presented because the grieved employe was not named. The Board stated:

"We are of the opinion that the 60 day period mentioned in the above agreement is mandatory and not directory, but such provision does not come into existence unless and until a valid claim is filed."

The Claim was denied.

This Board must uphold the agreement made in Article V and under the facts presented we hold that the "notice in writing" is mandatory and not regulatory and that the alleged notice in the record at the investigation was not such notice as was contemplated by the parties in presenting this grievance. There was no notice to the Carrier instituting the grievance and therefore, there was a failure to properly present this claim and the Carrier may raise that issue at any time.

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1958.