

Award No. 9850
Docket No. CL-9427

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE WESTERN WEIGHING AND INSPECTION BUREAU

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

(a) The Bureau violated and has continued to violate the Schedule Agreement effective September 1, 1949, when it refused to compensate Mrs. Therese Smid, Typist, Chicago, Illinois, for 1955 vacation not received as the claimant was on leave of absence due to illness.

(b) The Claimant, Mrs. Therese Smid, now be compensated for ten days at the rate of her position which would be equivalent to the vacation with pay due the Claimant in 1955.

EMPLOYEES' STATEMENT OF FACTS: There appears to be no dispute between the parties that Claimant is regularly assigned to Position No. 40, Typist in the Fruit and Vegetable Department, Chicago, Illinois, with a seniority date of April 21, 1948. Claimant had performed the necessary requirements in prior years that would entitle her to a vacation in 1955 which was scheduled July 18 to July 29, 1955, for ten working days. The Claimant was granted leave of absence account of sickness beginning June 16, 1955, which was prior to her scheduled vacation period and did not return to Bureau service until May 28, 1956.

Employees' Exhibit 1 indicates the Local Chairman requested the Claimant's immediate supervisor for vacation days in 1956 rather than for payment covering the 1955 vacation not received by the claimant. The basis of the claim was corrected as shown by the enclosed exhibits in requesting the Bureau to make payment for the 1955 vacation rather than asking for vacation days in 1956.

It will be noted in Employees' Exhibit 6 covering our appeal to the Bureau's Chicago office, the Employees suggested the file be held open for conference, however, the remaining exhibits show the claim was declined without conference.

The claim here presented has been handled with the officer designated by the Bureau to consider and pass upon such matters as evidenced by the enclosed exhibits resulting in the Bureau's denying the Employees' claim.

her a telephone with which to contact District Inspector Wells, but for reasons best known to the Claimant she remained completely silent concerning her July 1955 vacation at that time.

Now, gentlemen of your Honorable Board, the provisions of the August 21, 1954 National Agreement, which is on file with your Honorable Board, and which we and the Brotherhood of Railway Clerks are parties to, in Article V specifically outlines the procedure that must be followed when presenting claims or grievances and in that Article a definite time limit is established in which to present claims or grievances. In this instance, the statute of limitations expired long before the claim was presented to us and because of this delay we had no alternative but to decline the claim on the basis of the national rule contained in the August 21, 1954 Agreement.

Therefore, inasmuch as this claim is barred by the statute of limitations, we respectfully request that after you have reviewed the facts as we have presented them that you will reach the same conclusion as we have and that is this claim must be denied.

All data contained herein has been submitted to the Employees.

(EXHIBITS NOT REPRODUCED)

OPINION OF BOARD: Article 5 of the June 10, 1942 Interpretations of the December 17, 1941 National Vacation Agreement provides:

"As the vacation year runs from January 1 to December 31, payment in lieu of vacation may be made prior to or on the last payroll period of the vacation year; if not so paid, shall be paid on the payroll for the first payroll period in the January following, or if paid by special roll, such payment shall be made not later than during the month of January following the vacation year."

Article 5, Section 1 (a) of the August 21, 1954 National Agreement provides, in part:

"All claims or grievances must be presented in writing by or on behalf of the employee 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."

Both of the above-quoted provisions apply to the present case and by joint application of the two provisions it follows that to be timely the claim herein must have been filed no later than sixty days from January 31, 1956. The claim, however, was not filed until August 9, 1956. The claim is barred.

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 Employee involved in this dispute are respectively Carrier and Employee 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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1961.