

Award No. 9931

Docket No. CL-12043

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Lloyd H. Bailer, Referee

PARTIES TO DISPUTE:

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

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement when it removed the name of Sidney T. McKenzie from the January 1, 1959, Seniority Roster of the General Traffic Manager.

(2) That the name of Sidney T. McKenzie, Dallas, Texas, be restored to the Seniority Roster of the General Traffic Manager, with seniority date of December 30, 1957.

EMPLOYEES' STATEMENT OF FACTS: Mr. Sidney T. McKenzie began working for the Carrier as a Clerk-Steno in the office of Assistant General Freight Agent S. D. Swann, Dallas, Texas, on December 30, 1957, and his name was shown on the Seniority Rosters of the General Traffic Manager for January 1 and July 1, 1958, with a seniority date of December 30, 1957. The position of Clerk-Steno, to which Mr. McKenzie was regularly assigned, is covered by Exception C of Scope Rule 1, and is subject to the provisions of Exception J of Rule 1, reading:

"Employees assigned to positions listed under Exceptions B, C and D may be relieved or demoted therefrom without investigation, at the discretion of Management. This provision shall not operate to set aside, waive, or modify the employees' rights under Rule 23 in case of discipline or dismissal."

On December 30, 1958, Mr. S. D. Swann advised Mr. McKenzie that effective with close of business December 31, 1958, he was relieving him from the Clerk-Steno assignment. There were no junior employees who Mr. McKenzie could displace, and on January 7, 1959, Mr. McKenzie filed his name and address by Western Union Telegram, with Mr. G. W. Heuermann, General Traffic Manager, St. Louis, Missouri, and with the General Chairman, Tyler, Texas.

It is Carrier's position that if the Employees considered that the time limit provisions applied they waived application of such time limit provisions by not promptly requesting General Traffic Manager Heuermann to comply with Article V. Instead they progressed the claim to the highest officer designated by the Carrier to handle such disputes before requesting allowance of the request under the time limit, some six months after the initial protest was filed. Clearly this action was an afterthought on the part of the Employees.

Carrier submits there is no basis for the Employees' allegation that allowance of their request is due under Article V.

III

In conclusion the Carrier repeats that the claim clearly is not supported by the rules and should be denied.

All data herein has been presented to representatives of the Employees.

(Exhibits not reproduced)

OPINION OF THE BOARD: Claimant McKenzie was hired by the Carrier to fill the position of Clerk-Steno in the office of the Assistant General Freight and Passenger Agent in Dallas, Texas and subsequently was given a seniority date of December 30, 1957. This position was covered by Scope Rule 1 of the applicable Agreement effective April 1, 1946, as amended, subject to "Exceptions" C and J thereof. Effective as of the close of business on December 31, 1958 the Carrier removed claimant from this position on the asserted ground that his work was unsatisfactory. This action was taken under Exception J which provides in pertinent part: "Employees assigned to positions listed under Exceptions B, C and D may be removed or demoted therefrom without investigation, at the discretion of Management." There were no junior employees whom claimant could displace.

At 10:20 P. M. on January 7, 1959 the claimant filed with Western Union at Dallas identical telegrams addressed to General Traffic Manager G. W. Heuermann in St. Louis and General Chairman W. E. Straubinger in Tyler, Texas—these telegrams indicating the claimant's name and home address. Claimant McKenzie instructed Western Union to telephone the telegram contents to the General Traffic Manager and the General Chairman at their residences and to report to the claimant the delivery of these telegrams. Western Union subsequently confirmed that the telegrams were telephoned to the respective Carrier and Organization representatives the same night.

As of January 8, 1959 the Carrier removed the claimant from the pertinent seniority roster then being prepared to reflect seniority standing as of January 1, 1959. It is the Carrier's contention that this removal was proper because the claimant had failed to protect his seniority rights as required under Rule 15-5 which provides:

"Employees desiring to protect their seniority rights under this rule must within seven (7) days from the date actually reduced to the furlough or extra list, file their names and addresses in writing and in duplicate, both with the proper official (the Officer authorized to bulletin and award positions) and the General Chairman, and promptly advise of any change in address, or forfeit all seniority rights and be considered out of service, except when prevented by personal illness, or reasons satisfactory to the Carrier and the duly accredited representatives of the employees are furnished. Such official and the General

Chairman shall sign and return to the employe as acknowledgement one copy of the notice so filed."

By letter dated January 14, 1959, General Chairman Straubinger filed a claim with General Traffic Manager Heuermann in protest against the removal of Claimant McKenzie from the seniority roster and requesting that he be restored to the roster. No reply having been received from the General Traffic Manager, the General Chairman wrote him again about this matter on February 2, 1959. A reply was still not forthcoming. Accordingly, under date of May 15, 1959 the General Chairman appealed the claim on its merits to the First Assistant Manager, Personnel at Tyler, Texas. The latter officer denied the claim by letter dated July 13, 1959, wherein he rejected the General Chairman's contention that Claimant McKenzie had complied with the filing requirement set forth under Rule 15-5. This Carrier officer contended that the claimant's action in filing a Western Union telegram at 10:20 P. M. on January 7 "did not constitute a proper filing of his address as required by Rule 15-5 . . ."

By letter dated July 15, 1959 the General Chairman appealed the claim to the Carrier's highest officer designated to handle such matters. While continuing to urge that the Carrier had acted improperly in removing the claimant from the seniority roster, the General Chairman contended for the first time that Article V, Section 1(a) of the August 21, 1954 Chicago Agreement required that the claim be granted since General Traffic Manager Heuermann had failed to disallow the claim within sixty days from the date it was filed.

The Organization now contends that Rule 15-5 was not applicable to Claimant McKenzie's status at the time he was removed from his position, although it is urged that he nevertheless complied with the filing requirements of the rule. We hold that Rule 15-5 did, in fact, apply to the claimant under the confronting circumstances. We reject the Carrier's contention that the claimant was not entitled to avail himself of any appeal rights because he was no longer an employe after January 7, 1959 due to having failed to comply with the filing requirement of Rule 15-5. We therefore do not agree that Management was under no obligation to act upon the subject claim within sixty days from the time it was filed in writing. Whether the claimant had met the filing requirement of Rule 15-5 was a proper question to be made the subject of a claim.

The Carrier should have given proper notice of its action on the claim within 60 days from the date it was filed. On the other hand, the Organization should have requested allowance of the claim under Article V, Section 1 of the August 21, 1954 Agreement in appealing the matter to the next step, instead of waiting until the final step on the property to urge this point.

It is apparent that both parties to the Agreement have fallen into procedural error due to excessive delay. The claimant's use of the telegram device no doubt also was due to his own procrastination. We are unable to assess the extent to which each shortcoming is to be weighed against a deficiency on the other side. We conclude, however, that the ends of justice are best served by restoring Claimant McKenzie to the seniority roster.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employe 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 claimant shall be restored to the seniority roster of the General Traffic Manager with seniority date of December 30, 1957.

AWARD: The award is as stated in the Opinion of Board and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1961.