Award No. 11600

Docket No. TE-10380

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

SPOKANE, PORTLAND AND SEATTLE RAILWAY COMPANY (SYSTEM LINES)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Spokane, Portland and Seattle Railway that:

1. Carrier violated and continues to violate the agreement between the parties when it fails and refuses to pay employes filling regular positions during the absence of the regular occupant eight hours' pro rata pay on holidays in accordance with the provisions of Article II of the August 21, 1954 Agreement.

2. Carrier shall compensate such employe in the amount of eight hours' pro rata on each holiday commencing May 1, 1954 and continuing thereafter until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties are available to your Board and by this reference are made a part hereof.

The Statement of Claim above is a general claim due to the fact that all claims of this nature were held in abeyance, by agreement between the parties, pending the outcome of two cases which were before your Board for decision. The cases upon which this stand-by agreement were predicated are: Docket TE-7550 disposed of by Award 7977 and Docket TE-7590 disposed of by Award 7978. The claim was sustained in Docket TE-7550 (Award 7977) and denied in Docket TE-7590 (Award 7978). The parties then could not agree upon which award was applicable to the claims on this property. Further discussion of the two awards will appear later, but now Employes wish to introduce the pertinent exchange of correspondence leading up to the dispute concerning the applicability of the awards.

After claims had been filed on behalf of extra telegraphers for this holiday pay when relieving on regular positions, General Chairman R. C. Coffield, of the Organization, wrote General Manager E. H. Showalter, of the Carrier, the following letter under date of June 24, 1955:

"Please refer to our claim covering work of extra telegraphers, requesting payment for Holidays, when filling regular positions in the absence of the regular employe, to be same as regular employe.

further handling under the express terms of Section 2, Article V (Time Limit on Claims) of the August 21, 1954 National Agreement; and

(3) Neither Article II (Holidays) of the August 21, 1954 National Agreement nor Rule 3 (c) of the current Telegraphers' Schedule on this property lends any support to the general and indefinite claim which Petitioner has referred to your Board.

All data in support of the Respondent's position has been submitted to the Petitioner and made a part of the particular question here in dispute. The right to answer any data not previously submitted to the Respondent by the Petitioner is reserved by the Respondent.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset, Carrier raises several procedural questions, any one of which, if valid, affects the propriety of the Board to rule on the merits of the dispute. One of these is the timeliness of the filing of the claim with the Board.

Petitioner's Local Chairman first presented the claim to Carrier's Superintendent on November 1, 1954. Carrier's Superintendent declined the claim in a letter dated November 4, 1954. In a letter dated November 30, 1954, Petitioner presented the claim to Carrier's highest designated appellate officer. A conference was held on December 10, 1954, at which time both parties agreed to submit the issue involved to their respective conference committees for clarification. Under date of June 2, 1955 Carrier's highest appellate officer wrote to Petitioner's General Chairman, in part, as follows:

"I am now in receipt of advice indicating that the particular question, which I submitted to the Carrier's Conference Committee as a result of our conference on December 10, has apparently not been considered jointly by the two Conference Committees. However, I have been informed that the classification of an extra employe is not changed to that of a regularly assigned employe by reason of application of Rules 2(c) and 3(c) of the Telegraphers' Agreement on this property; that, accordingly, Article II, Section 1, of the August 21, 1954 Agreement does not apply to an extra employe who relieves an absent regularly assigned employe during a period in which a designated holiday falls on a work day of the work week of the regularly assigned employe, but on which holiday no service is performed.

Payment of the claim stated in your letter November 30, 1954, is therefore declined."

Following this, Petitioner's General Chairman wrote to Carrier, requesting a "memorandum of agreement, covering the provisions of the time limit rule pending decision of two identical cases which we have before the Board for adjustment by the Union Pacific and Erie Railways." The letter dated June 24, 1955 continues, in part, as follows:

"It is agreed that such claims which have been filed, and which may be filed in the future, by or on behalf of extra employes for straight time pay on holidays, will be held in abeyance until 30 days after the date of the last two awards involving similar disputes

which have been submitted to the Third Division of the National Railroad Adjustment Board by the Order of Railroad Telegraphers from the Union Pacific Railroad and the Erie Railroad on February 4, 1955 and April 15, 1955, respectively.

It is understood that this Memorandum is not intended to modify the National Agreement of August 21, 1954, or any other agreements in effect between the parties; the sole purpose of this Memorandum being to hold in abeyance claims as referred to herein until the Third Division, National Railroad Adjustment Board, has rendered awards involving the two above named disputes and until the parties have had an opportunity to confer in the matter."

No formal memorandum was executed by the parties. Instead, a conference was held on July 14, 1955, following which Carrier wrote to Petitioner on July 15, 1955, in part, as follows:

"This claim was declined in my letter June 2, 1955, File 880-b. You stated in conference that declination of the claim was not acceptable to your organization; that your organization had two similar claims pending before the Third Division, National Railroad Adjustment Board, on other railroads; that you desire an agreement with this carrier that any further handling of this claim would be held in abeyance until 30 days after awards were issued in the two similar cases referred to on other railroads, even though this might involve certain of the time limit provisions of the August 21, 1954 Agreement insofar as this particular claim is concerned.

This carrier is agreeable to complying with your request, providing you will advise the docket number of the two similar claims, which you advised are now pending before the Third Division."

Petitioner furnished the docket numbers of the two pending claims in a letter dated September 12, 1955.

This Division rendered a decision in the two dockets on July 2, 1957. Petitioner's General Chairman wrote to Carrier's General Manager on August 15, 1957, that the claim should be allowed as submitted on the basis of the decision of this Division in Docket No. TE-7550 because the Agreement therein involved contained a Rule similar to Rule 3(c) of the Agreement applicable to this claim. On August 19, 1957, Carrier's General Manager replied that the rule upon which a sustaining Award was issued in Docket No. TE-7550 is not similar to Rule 3(c) of this Agreement. The concluding paragraph of that letter said:

"Declination of this claim per Mr. Showalter's letter dated June 2, 1955, is hereby affirmed."

Notice by Petitioner of intention to appeal the claim to the Board is dated April 25, 1958.

Carrier contends "that Petitioner did not appeal the claim to this Board within that extended time limit," in violation of Section 1(c) of Article V of the Agreement of August 21, 1954. Petitioner contends that the handling of the claim on the property was completed when Carrier declined the claim on August 19, 1957. Thus, the appeal to the Board on April 25, 1958 was timely.

Section 1(c) of Article V of the Agreement of August 21, 1954 provides, in part, as follows:

> "All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

Carrier's highest designated officer declined the claim on June 2, 1955. At that time Petitioner was required to institute proceedings before the Board before March 2, 1956. This time limit was extended by the parties until 30 days after Awards were issued in the two cases then pending. Awards in the two cases were adopted by this Division on July 2, 1957. This means that by August 2, 1957 Petitioner was required to complete its intention to appeal to the Board.

Instead, Petitioner did nothing until August 15, 1957, when it wrote to Carrier as hereinbefore set forth. And then Petitioner waited until April 22, 1958 to file its notice of intent to appeal. This is 2 years and 10 months after the claim was first declined by Carrier's highest designated appeal officer.

Petitioner argues that the parties agreed to Petitioner's proposal as contained in its letter of June 24, 1955, which states that:

> ". . . the sole purpose of this Memorandum being to hold in abeyance claims as referred to herein until the Third Division, National Railroad Adjustment Board, has rendered awards involving the two above named disputes and until the parties have had an opportunity to confer in the matter."

This is not entirely so. Carrier agreed "that any further handling of this claim would be held in abeyance until 30 days after awards were issued in the two similar cases referred to on other railroads. . . ." The only handling of this claim left under Article V of the August 21, 1954 Agreement was the further instituting of proceedings before the Board. The 9 months requirement under Section 1(c) of Article V which would have expired on March 2, 1956 was "held in abeyance until 30 days after awards were issued" which in this instance would have been August 2, 1957. There is nothing in the record to support Petitioner's position that the time limit rule was extended to 9 months after Carrier again declined the claim which they say was August 19, 1957. There is certainly no agreement by the Carrier to abide by the decision of the Board in the cases then pending.

It should be noted that in its letter of August 19, 1957 Carrier said that the declination of the claim on June 2, 1955 "is hereby affirmed." A mere reaffirmation of a prior claim does not extend the time limit. Award 10688 (Mitchell). The record does not show an agreement to extend the 9 month appeal requirement to a period beyond August 19, 1957.

We recognize that it is the first purpose of the Board to dispose of claims on the merits. A dismissal of a claim on procedural grounds is often a hardship and sometimes inequitable. We are, nevertheless, bound by the rules and

the Agreements made by the parties. Procedural rules have a purpose. They impose upon both parties an obligation to expedite the processing of claims so that they may be more quickly adjudicated. Where such precise time limits exist they must be complied with unless waived by the parties. We cannot permit sentiment to control our decisions. We are obliged to adhere to the terms of the Agreement.

On the basis of the facts disclosed in the record, we are obliged to hold that the claim was not presented to the Board within the time limits contained in Section 1(c) of Article V of the August 21, 1954 Agreement. For this reason it is not necessary for us to consider other alleged procedural defects and we may not rule on the merits of the dispute.

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 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 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 12th day of July 1963.