Award No. 11777
Docket No. TD-13793

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The St. Louis-San Francisco Railway Company, (hereinafter referred to as "the Carrier"), violated the existing schedule agreement between the parties, specifically Article III (a) thereof, when it failed to properly compensate Train Dispatcher D. C. Patrick for services performed on November 7, 1961, one of the assigned weekly rest days of the individual claimant.

(b) The Carrier shall not be required to compensate Claimant D. C. Patrick in accordance with the said Article III (a), less any amount previously paid to him.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement in effect between the parties, copy of which is on file with this Board, and the same is incorporated into this Submission by reference as though fully set out herein.

For ready reference, the first paragraph of Article III(a) of said Agreement, upon which the instant claim is predicated, is quoted:

"(a) 1. Each regularly assigned train dispatcher will be entitled and required to take two regularly assigned days off per week as rest days, except when unavoidable emergency prevents furnishing relief. Such assigned rest days shall be consecutive to the fullest extent possible. Non-consecutive rest days may be assigned only in instances where consecutive rest days would necessitate working any train dispatcher in excess of five days per week. Any regularly assigned train dispatcher, who is required to perform service on the rest days assigned to his position, will be paid at rate of time and one-half for service performed on either or both of such rest days."

Item (b) of the Employes' Statement of Claim reads as follows:

"The Carrier shall now be required to compensate Claimant D. C. Patrick in accordance with the said Article III (a), less any amount previously paid to him."

This portion of the claim should be declared invalid for vagueness and uncertainty, if for no other reason, in that this Division can only speculate as to what is actually involved in the monetary portion of the claim. The vagueness and uncertainty of item (b) of the Employes' Statement of Claim is understandable because when the claim for a day's pay at time and one-half rate was being handled on the property, the only explanation given Carrier representative for handling the claim on that basis is that was the manner in which the claim was initially presented. On familiar principles an expansion or enlargement of a claim on appeal to this Board nullifies the appeal. The amount of the claim as handled on the property is clearly set forth in the General Chairman's letter of March 2, 1962, which is entered in the record as Carrier's Exhibit A-2.

It is obvious that the Employes have purposely chosen to be vague and uncertain respecting their request for reparations in anticipation that should this Division issue a sustaining award it will not foreclose them from contending that the claimant is entitled to more than the amount of the claim as handled on the property.

In conclusion, it is the Carrier's position that no payment is due the claimant for attending the investigation on his rest day November 7, 1961. The Organization has never disclaimed the applicability of Article V (f) should the claimant have been required to attend the investigation as a witness for the Carrier on one of his assigned work days instead of a rest day, and the Carrier submits if the rule governs the attendance at an investigation of an employe similarly situated on an assigned work day, it applies with equal force to rest days. Attached, as Carrier's Exhibit A-5, is statement of the Chief Dispatcher in the Springfield, Missouri train dispatching office concerning the payment under Article V (f) of a day's pay at pro rata rate to a regularly assigned Train Dispatcher who was required to lose a day's pay on an assigned work day August 10, 1962 to attend an investigation as a witness for the Carrier in which he had no mutuality of interest.

This appeal should be denied or dismissed for untimeliness but if that objection is overruled, the appeal should be denied for reasons herein stated.

All data submitted in support of Carrier's position have been presented to Employes or duly authorized representative thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: The first question presented here is as to whether or not this Board has jurisdiction to attend this case. In its initial submission Carrier urges that the case is improperly submitted by reason of the failure of the Organization to appeal to this Board within six months from the date of the declination of the claim as required by Article V - A (b) which provides, as follows:

"(b) Decision by the highest officer designated by the company to handle claims and grievances shall be final and binding unless within six months from the date of said officer's decision such claim

or grievance is disposed of on the property or proceedings for the final disposition of the claim or grievance are instituted by the train dispatcher or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved and such Railway officer is so notified. It is understood, however, that the parties may by agreement in any particular case extend the six months period herein referred to."

The instant claim was appealed to the highest officer designated by the Carrier to handle claims on Macrh 2, 1962; the claim was denied by him on April 16, 1962. By letter dated November 6, 1962, the Organization notified the Executive Secretary, Third Division, National Railroad Adjustment Board, of intention to file an ex parte submission on the instant, unsettled dispute between this Carrier and the Organization — this was six months and twenty-one days after the denial of the claim on April 16, 1962.

Though conceding that the foregoing factual statement is literally correct, Claimant contends that, inasmuch as the Carrier discussed the claim on its merits in conferences subsequent to April 16, 1962, that conduct on the part of the Carrier in effect extended the time limit or induced the Claimant to believe that the time limit had been extended. Claimant has produced no communication in writing of any kind or nature from the Carrier after April 16, 1962, so, consequently, there could be nothing in writing from which an inference could be drawn indicating there was an intention on the part of the Carrier to extend the time limit.

This Board has consistently held that the failure to progress claims in accordance with the "Time Limit Rules" is fatal. See Award 8804 (Bailer) and other awards.

Where precise time limits exist they must be complied with unless waived by the parties. A mere re-affirmation of a prior claim does not extend the Time Limit Rule. See Award 10688 — Mitchell; Award 11600 — Dolnick. Neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as time limit extension agreements. See Award 11597 — Stark.

There has been no satisfactory evidence in this case that the Carrier was either withdrawing its decision or re-opening the case. Claimant having failed to institute proceedings before this Board as required by Article V-A (b) within six months after the denial of this claim, we are forced to the conclusion that the decision of the highest officer of the Carrier on April 16, 1962 shall be final and binding and, therefore, this claim must be dismissed.

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 Employe 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

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 9th day of October 1963.