

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

SOUTHERN PACIFIC COMPANY (Pacific Lines)

STATEMENT OF CLAIM: Claim of Dining Car Steward M. I. Jacobi, Northern District, for compensation for all time lost, September 16, 1961, and subsequent dates, until he was restored to his assignment, account being arbitrarily withheld from service during that period.

OPINION OF BOARD: Carrier has raised a procedural question contending that Claimant is deemed to have abandoned his Claim on the property and is, consequently, barred from processing it further to this Board. Item 6 of the Interpretation Agreement entered into between the parties on January 4, 1950, is pertinent to a determination here and reads as follows:

"Item 6. Time claims, grievances, and disciplinary cases which have been denied by the Superintendent shall be submitted to the highest general officer of the carrier designated to handle such claims and cases and discussed in conference with said officer within one (1) year from the date of one of the following conditions, whichever is the latest:

(a) Superintendent's last letter denying the claim or case;

(b) Date of Local Chairman's letter notifying Superintendent of his intention to appeal the claim or case;

subject to extension by mutual agreement. If not handled as herein prescribed, such claim or case will be deemed to have been abandoned." (Emphasis ours.)

The Claim was originally presented to the Superintendent of Commissary on December 12, 1961. On December 15, 1961, the Superintendent addressed a communication to the Local Chairman which contained the following language:

"The claim is without merit and is denied. However, without prejudice to this position, I am agreeable to discussing the matter

with you on any date which will be agreeable to you." (Emphasis ours.)

Again, on January 8, 1962, the Superintendent expressed himself to the Local Chairman in a letter addressed to him, as follows: **"Without prejudice to the position taken by me in this matter in my letter of December 15, 1961, I shall be agreeable to discussing the case with you . . ."** (Emphasis ours)

In a letter addressed to the Local Chairman on November 26, 1962, we find the following: **"Nothing has developed in this case to warrant a reversal of my decision as set forth in my letter to you of December 15, 1961, and which denial is hereby affirmed."** (Emphasis ours)

An appeal was taken to the Assistant Manager of Personnel, the highest general officer of the Carrier designated to handle claims, by the General Chairman on January 30, 1963. It is Claimant's contention that the last letter denying the claim was on November 26, 1962. Carrier, to the contrary contends that the last letter denying the claim was that contained in the Superintendent's letter of December 15, 1961 and that more than one year had elapsed before an appeal was taken to the Assistant Manager of Personnel and that in compliance with Item 6 of the Interpretation Agreement the claim was deemed to have been abandoned.

It is significant to note that in Item 6 it is not the last letter written concerning the claim from which the year of limitation is to run but it is from **"Superintendent's last letter denying the claim."**

The Superintendent's letter dated December 15, 1961, was the last denying the claim. The final paragraph of that letter (heretofore cited) leaves no doubt but that the claim was irrevocably denied and that any further discussions thereon would be without prejudice to Superintendent's denial. The letter of November 26, 1962, was simply a re-affirmation of the prior denial of the claim, an act accomplished.

See Awards 6864 (Parker), 7000 (Carter), 10688 (Mitchell), 11600 (Dolnick), 11777 (Hall).

There is nothing in the record indicating any understanding was reached between the parties to extend the time limit as provided for in the Agreement.

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 Employees involved in this dispute are respectively Carrier and Employees 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 17th day of September 1964.