Award No. 13239

Docket No. PC-14664

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

THE PULLMAN COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor J. P. Palm, Chicago West District, that:

1. On February 8, 1960, Conductor Palm was regularly assigned to PRR trains 28 and 29 designated as Line 6585 between Chicago and New York. Effective January 31, 1960, Conductor Palm, under the provisions of Rule 32 of the Agreement, notified Management that he was resigning from his regular assignment at the expiration of the 15-day period. The Company, in violation of Rule 32, furloughed Conductor Palm on February 8, 1960.

We claim that Conductor Palm should have been permitted to perform two more trips in his regular assignment, the trip of February 9th and the trip of February 13th.

2. Because the Company violated Rule 32 we ask that Conductor Palm be credited and paid for the two above trips just as though he had properly made them.

Rule 27 is also involved in this claim.

EMPLOYES' STATEMENT OF FACTS: There is an Agreement between the parties, bearing the effective date of September 21, 1957, and amendments thereto, on file with your Honorable Board, and by this reference is made a part of this submission the same as though fully set out herein.

I.

Prior to February 1, 1960, Conductor J. P. Palm, Chicago West District, under the provisions of Rules 25 and 31, was awarded an assignment in the conductor run on PRR trains 28 and 29, designated for accounting purposes as Line 6585, between Chicago, Ill., and New York City, N. Y.

II.

According to the record (Min. p. 5), Mr. D. R. Culver, Superintendent of Transportation, The Pullman Company, in a memorandum to Superintendent

in a force reduction be furloughed in seniority order. Further, the Company has shown Conductor Palm waited two days after receipt of furlough notice before submitting resignation from his regular run with possible intent to interfere with the furlough procedure prescribed by the rules of the Agreement. Finally, the Company has cited awards of the Board supporting Management in this dispute.

The claim is without merit in all respects and should be denied.

(Exhibits not reproduced).

OPINION OF BOARD: The incident giving rise to the claim occurred on February 8, 1960. Claim was presented on the property on March 29, 1960. Decision of Carrier's highest officer, denying the claim, issued on August 19, 1960. Petitioner did not refer the dispute to this Board until February 3, 1964 —about 3½ years after final decision on the property. Carrier moves that the doctrine of laches be applied and that we dismiss.

The Agreement contains no specific time limitation within which a dispute must be referred to this Board. Paragraph (k) of Rule 49 reads:

> "(k) Decision of the highest officer designated to handle appeals shall be final and binding unless within 60 days from date of such decision the said officer is notified in writing that his decision is not accepted. Any further appeal shall be taken in accordance with the provisions of the Railway Labor Act."

The term "laches" has been loosely used in a number of our Awards in which we have dismissed because of the failure to refer the dispute to this Board within a reasonable time after decision by the highest officer on the property. Technically, "laches" is a doctrine in equity. Since this Board has no equity powers, we may not dismiss because of laches. We must look to the law as expressed in the Act.

The Act contains no specific time limitation within which a dispute shall be referred to the Board. But, the Congress has stated the purpose of the Act:

> "Being An Act To provide for the prompt disposition of disputes between carriers and their employes and for other purposes."

The public policy enunciated in the Act for the protection of the public interest is not fulfulled when failure to exercise the right of referral to this Board for an unreasonable time prevents "prompt disposition of disputes".

We find that Petitioner slept on its rights for an unreasonable time. We will dismiss the claim.

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 referral of the dispute to this Board was not timely made.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of January 1965.

LABOR MEMBERS' DISSENT TO

AWARD NO. 13239 — DOCKET NO. PC-14664

Award No. 13239 is clearly erroneous.

The most compelling reason why the Majority's holding regarding delay must fall, is that the parties have dealt with the subjects of **Discipline, Rule 49, Unjust Treatment,** Rule 50, and **Claims,** Rule 51, without providing any time limit on referring claims to this Board. By a long line of Awards we are not empowered to either write or rewrite rules for the parties.

The Railway Labor Act contains no specific time limitation, nor does Rule 51 of the Agreement between the parties herein contain a time limit for referring a Claim to the Board after proper handling on the property. The precise question has been before the Board on previous occasions and we have consistently dismissed the Carrier's holding that the Employes were dilatory in referring a case to this Board, and especially so when, as here, there was an identical case pending before the Board. For example, Award No. 12128 (Dolnick) ruled that:

> "The Company first contends that the claim should be dismissed because Petitioner failed to prosecute the claim within a reasonable time. They argue that Petitioner is guilty of laches because, although the claim was denied by the Company's Appeals Officer on September 16, 1959, it was not filed with the Board until June 4, 1963, more than three and one-half years later."
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> "There are extenuating circumstances for the delay in this case. At the time this claim arose, there was pending a similar claim involving the same parties and identical issues relevant, to the interpretation of the Memorandum of Understanding of September 21, 1957 which is appended to and made a part of the Agreement. Particularly involved was Item 5 of that Memorandum which is also in issue in this case. The Board sustained the claim in Award 11459 (Miller) on May 27, 1963. Petitioner appealed the claim now under consideration to this Board on June 4, 1963, about a week later.
>
> It is understandable that Petitioner would not be eager to have multiple claims pending before the Board, involving the same Company and the identical issue. While it is desirable and necessary to dispose of disputes and grievances with reasonable dispatch, it is also desirable to avoid multiple cases before the Board involving the same

parties and the same issue. It is reasonable to assume that the parties will abide by the decision of the Board's Awards and dispose of all similar claims on the basis of those Awards. Had the Board denied the claim in Award 11459, Petitioner, in all probability, would have withdrawn the claim. If it pursued it before the Board, it would show bad faith. The claim is properly before the Board."

And in Award 11679 (Webster):

"The Carrier contends that in light of the fact that nineteen months elapsed between the appeal to the Carrier's highest officer and the notice of submission to the Board that this claim should be barred by laches. Laches is a principle of equity and this Board has consistently held that it does not have equitable powers. This does not mean that a claim may not be barred by failure to comply with the Railway Labor Act. In this case there is no time limit rule in the Agreement and without a time limit rule it is the judgment of this Referee that the Carrier must do more than make a mere assertion of laches here to bar the claim. If the claim had, in fact, been completely settled on the property, the Carrier should have submitted proof."

Award 6921 (Coffey) held:

"Complaint is that the claim was not forwarded to this Board until some 27 months after Carrier was notified the declination of the claim was not acceptable, and, therefore, the Carrier says it had a right to believe that its final decision was accepted. We cannot agree.

Although admitting that the Railway Labor Act does not serve as a statute of limitations for progressing claims to this Board, the Carrier, nevertheless, urges that delays such as the one in question are contrary to the spirit and intent of the expressed purpose of the Act to provide a forum for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules or working conditions. While the usual order is for the Employes to bring the dispute here, we know of nothing in the law that serves as a bar to the Carrier progressing a dispute if and when it elects to do so. Some disputes are and all can be brought here by joint submission. Therefore, we know of no reason to put the onus entirely on the Employes to bring disputes to the Board's attention, and will not set up a roadblock on a street that both parties can travel, because one does not start the journey and the other is slow of foot. The law exacts no certain degree of promptness and we know of no such express power vested in the Board.

That the Board does not look with favor upon delays (although it, too, is subject to criticism for the same thing it is here asked to condemn) is evidenced by denial awards in some cases on a showing of what amounts to laches or on other equitable grounds.

It comes quite hard for the Board to say it does not deal in equity and at the same time deny claims for unreasonable delays account of undue burdens suffered. That it has done so and will continue to do so there can be no doubt. In this case, however, we will

not disturb Rule 54 by adding another step to the Parties' Agreement in order to provide a time limit for progressing unsettled disputes to the Board. The Carrier and its Employes did not do so when they had the subject up for negotiations and it would be unbecoming of us to supply what is now an omission in the rule, by dismissing the claims in this docket for failure to promptly progress the dispute after its handling on the property was complete. We hold that the claims are not barred and will undertake to settle the dispute on its merits."

In Award 7003 (Wyckoff)

"FIRST. The Railway Labor Act contains no time limitations on claims: and neither does this Agreement, although many do. There is therefore, no basis for denial of this claim under the conduct of the Claimant or of the Organization makes it unequitable, under established Board decisions, to sustain the claim.

SECOND. There are numerous Awards partially denying claims upon the grounds of waiver, estoppel, laches, or unreasonable delay. But they all involve situations in which evidence showed actual acquiescence in a mutually known deviation from the terms of the Agreement over a long period of time, such as specific understandings with Employes, or local chairman (Awards 2849, 2576, 2593, 4122, 4428 and 5098) or unreasonable delay in prosecuting denied Claims (Awards 2550, 4463, 4941, 5190, 6229 and 6656).

Lapse of time alone is not sufficient. There is no showing here that the Carrier has been actively misled by its adversaries to the belief that no claim would ever be presented or that the Carrier has been prejudiced in the presentation of any meritorious defense that is might have to the Claim".

The delay in the present case is not shown to have prejudiced the rights of the Carrier, If passage of time alone is sufficient to bar a Claim, the Rule then rises to the dignity of the statute of limitations, something that was considered and rejected when the provisions of the Railway Labor Act was pending before Congress.

The present case did not warrant a finding of dismissal on the basis of "unreasonable" delay. Furthermore, the Carrier was not barred from progressing the unsettled dispute to this Board, and, on previous occasions, it has exercised that right. (CF Award 6921)

The record shows that a similar dispute was pending before this Board at the time the instant case arose. Award 11109 (McGrath), disposed of that case, sustaining the employes position.

In the light of the precedent Awards hereinbefore cited, and other reasons as stated herein, I dissent.

/s/ H. C. Kohler

H. C. Kohler
Labor Member