

Award No. 13644
Docket No. CL-14067

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**

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5313) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly the Scope Rule, when it abolished clerical position Symbol No. G-215, incumbent G. B. Bauer, located at Paoli Yard Office, Paoli, Pennsylvania, Philadelphia Region, effective October 15, 1957, and assigned the work of the abolished position to Yard Conductors in violation of the Scope of the Clerical Rules Agreement.

(b) Claimants F. J. McLaughlin, F. G. Mischler and J. J. Barnett, should be allowed eight hours' pay a day for October 16, 1957, and all subsequent dates until the violation is corrected. (Docket 1095)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the Claimants in this case held positions and the Pennsylvania Railroad Company — hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, except as amended, covering Clerical, Other Office, Station and Storehouse Employees between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

The Claimants in this case, F. J. McLaughlin, F. G. Mischler and J. J. Barnett, were the incumbents of regular Group 1 clerical positions of Crew

The Railway Labor Act, in Section 3, First, subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules and working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties thereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that the Yard Conductor at Paoli Yard performs no work in violation of the clerical Scope Rule; that Rule 3-C-2 was not violated as a result of the abolishment of Position G-215, and that the Employees have produced no valid evidence in support of their claim.

Therefore, the Carrier respectfully requests your Honorable Board to deny or dismiss the Employees' claim in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: The continuing claim, which concerns a Carrier action effective on October 15, 1957, was filed on the property by the Organization's Local Chairman by letter dated December 9, 1957 and directed to Carrier's Assistant Passenger Trainmaster at Penn Coach Yard, Philadelphia. The Trainmaster denied the claim, whereupon the Organization's Division Chairman made appeal to Carrier's Superintendent-Personnel, Philadelphia Region. The latter officer issued a written denial under date of April 3, 1958. By letter dated January 20, 1961 and addressed to the same Superintendent-Personnel, the Division Chairman requested a special meeting to be held on January 26, 1961 "for the purpose of further discussion" on certain listed claims, "and if necessary enter into Joint Submission." The subject claim was among those listed in the Division Chairman's letter. The Joint Submission on this claim was completed by the parties' representatives on September 8, 1961. At a meeting on October 18, 1961 the General Chairman presented the claim to the Manager, Labor Relations—the highest Carrier officer designated to handle such disputes on the property. By letter dated February 2, 1962 the Manager, Labor Relations denied the claim on the merits and also contended the claim was barred due to the Organization's excessive delay in taking appeal from the denial by the Superintendent-Personnel.

The General Chairman relisted the claim for further discussion with the Manager, Labor Relations at a meeting on March 21, 1962. By letter of April 25, 1962 the Manager, Labor Relations again asserted the claim was barred due to excessive delay and restated his previous denial on the merits. The General Chairman again relisted the claim for further discussion at a meeting scheduled for August 15, 1962. The claim was discussed at this meeting and by letter dated August 17, 1962 the Manager, Labor Relations reaffirmed the position stated in his letters of February 2 and April 25, 1962. By letter dated January 29, 1963 the Organization gave notice of intention to file with this Board an ex parte submission covering the subject claim. In the proceeding before the Board the Carrier has adhered to its position that the claim is barred due to excessive delay by the Organization in progressing

same on the property. Carrier further contends the claim is without merit even if it were considered as properly before the Board on the merits.

The record is barren of any evidence that while the claim was still on the property the Organization answered the repeated contention of the Manager, Labor Relations regarding the claim being barred due to excessive delay. Nor does the Organization's ex parte submission to the Board make any specific reference to Carrier's contention in this respect. In its written rebuttal to the Carrier's ex parte submission, however, the Organization quotes from a letter dated March 14, 1962 from the Division Chairman to the General Chairman, wherein it was stated that prior to his January 20, 1961 letter to the Superintendent-Personnel regarding preparing a Joint Submission, he (the Division Chairman) "made several attempts to draw up Joint Statement of Facts with the Wage Examiner, with no success, before I realized that I should have myself on record asking for Joint Submission." The Division Chairman's letter also stated the Superintendent-Personnel had no reason to believe the Organization had abandoned the claim, because the Superintendent received the Division Chairman's status reports as of February 1, 1959 and subsequent dates which included this claim as among those still open and active — with no challenge being made to the listed status of this claim.

The Organization's rebuttal brief further relates that the records indicate the claim was listed for rediscussion with the Superintendent-Personnel on November 9, 1960, which was prior to the previously noted relisting requested on January 20, 1961 for a special meeting with the Superintendent-Personnel on January 26, 1961. Thus it is urged that part of the delay claimed by the Carrier was due to Management's inaction and, in any event, was not as great as Carrier contends. The Organization contends that Carrier has been responsible for equally long delay in handling other claims.

The most favorable view of the timetable indicated in the record on this case discloses that the Organization waited approximately 2½ years after the April 3, 1958 denial by the Superintendent-Personnel before even listing the matter for rediscussion with that Carrier's representative. We think this was an unreasonable and excessive delay, particularly in view of the fact that continuing monetary liability was involved. The Railway Labor Act provides (Section 2, First) that "all disputes . . . shall be considered, and, if possible, decided, with all expedition, in conference between representatives . . ." of the parties. The Organization has not complied with the command of the Act in this respect.

The fact that during the 2½ year period in question the Division Chairman periodically listed the subject claim as still active in his status reports, copies of which were supplied the Superintendent-Personnel, does not excuse the Organization's excessive delay in undertaking further handling, nor can Carrier be said to have thereby consented to the delay. After the appeal to the Superintendent had been denied by him, it was the Organization's responsibility to take such further action as it deemed appropriate. Although it is contended that Carrier was tardy in handling the claim on several occasions, no Management delay was anywhere near as great as that engaged in by the Organization and therefore cannot be said to have mitigated the Organization's failure to act with reasonable expedition.

For the reasons stated above, the claim will be dismissed without prejudice to the contentions of the parties regarding the substantive aspects thereof.

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 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 by lapse of time.

AWARD

Claim dismissed without prejudice, in accordance with the Opinion 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 May 1965.