

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, 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-5478) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 6-A-1, 6-B-1 and 7-A-1, when it held Mr. Michael Mina, Baggagehandler, Pennsylvania Station, New York, N.Y., New York Region, out of service commencing April 2, 1952, and subsequently imposed discipline of dismissal from service.

(b) Michael Mina be restored to service of Carrier with seniority and all other rights unimpaired and his record cleared.

(c) Michael Mina be reimbursed for all wage loss sustained commencing April 2, 1952 and continuing until the violation is corrected. In addition, Claimant should be allowed payment in lieu of the vacation which the Carrier denied him in the year 1952. (Docket 1372)

OPINION OF BOARD: On April 9, 1952, Carrier served Claimant with the following written notice:

"This is to advise that you are being held out of service pending trial and decision in connection with:

Your apprehension on April 2, 1952, in connection with the irregularities in the handling of U. S. Mail at Penn. Station, New York."

On April 2, 1952, Claimant had been arrested for "Conspiracy and Theft of U.S. Mail." He was indicted on June 12, 1952. He was not brought to trial on the indictment until 1960. After hearing the evidence the Judge, on April 22, 1960, took the case from the jury and dismissed the indictment. In his Opinion he said:

"Well, taking the delay into account, plus the, shall we say, rather vague versions given by the witnesses and the almost amorphous nature of the case in so far as specific events are concerned, I have concluded that even were I to submit this case to you, and were

you to be satisfied that the Government has established its case, that is, returned a verdict of guilty, I would, within the exercise of my power, set that verdict aside. I say that (1.) because of the nature of the evidence which has been submitted, and (2.) because I believe that the nature of that evidence is shown to be faulty by reason of this inordinate delay—this excessive delay in bringing the case to trial, and therefore that the constitutional rights of the defendants have been invaded and they have been deprived of an opportunity for a fair trial.”

On October 4, 1960, Carrier directed Claimant to report and stand trial on the following charge:

“Irregularities in the handling of U.S. Mail at Pennsylvania Station, New York, N.Y., on various dates in 1951 and 1952.”

The trial was concluded on December 14, 1961. Carrier found Claimant guilty as charged and dismissed him from service on January 23, 1962.

Clerks contend that: (1) Carrier's inordinate delay in bringing Claimant to trial; and, (2) the inexactness of the charge, violated Claimant's contractual right to a fair and impartial trial.

Carrier's defense to the delay is that the District Attorney would not make available to it the evidence he had marshalled or permit witnesses to testify in a Carrier's trial until the criminal case had been tried in the United States District Court.

The pertinent provisions of the Agreement are:

“RULE NO. 6—DISCIPLINE

6-A-1. (a) Employees will not be suspended nor dismissed from service without a fair and impartial trial.

(b) When a major offense has been committed an employe suspected by the Management to be guilty thereof may, after the occurrence of the offense, be held out of service pending trial and decision.

* * * * *

6-C-1. (a) An employe who is accused of an offense and who is directed to report for a trial therefor, will be given reasonable advance notice in writing of the exact charge for which he is to be tried and the time and place of the trial.”

Rule 6-A-1 does not prescribe a time within which the trial must be held. In the absence of such a prescription it is a principle of contract construction that it must be held within a reasonable time. *Prima facie*, over eight years is not reasonable.

We find that Carrier's defense of lack of evidence did not absolve it of its contractual obligation to bring Claimant to trial within a reasonable time after the date he was held out of service. Further, we find that the charge on which Claimant was brought to trial was not “exact” within the contemplation of that specification in Rule 6-C-1. We will sustain 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 Employee involved in this dispute are respectively Carrier and Employee 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 Carrier violated the Agreement.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 8th day of June, 1966.