

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

George S. Ives, 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-5060) that:

(a) The Carrier violated the Rules Agreement, effective May 1, 1942, except as amended, as well as long established practices thereunder, by unilaterally changing the semi-monthly schedule of pay days for all employees which had been in effect for more than forty years, to a bi-weekly schedule, effective March 1, 1961; by changing the method of computations in converting monthly rates of pay to a daily basis from that previously in effect; by withholding additional days of pay due over that previously withheld.

(b) The Carrier be required to immediately restore all of the previous practices in effect with respect to the schedule of pay days, the method of computing followed in converting monthly rates of pay, and the number of days withheld or the interval between close of pay period and payment of wages.

(c) The Carrier be required to pay interest at the rate of one-half of one per cent a month from March 1, 1961, and until adjusted, on all monies withheld as a result of delayed pay days or as a result of a change in methods of computations, to each and every employee covered by the Scope of the Rules Agreement. (File 8.5)

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representatives of the class or craft of employees involved herein and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

On January 25, 1961, the General Chairman wrote Mr. Herman Kendall, Manager-Labor Relations, Pennsylvania Railroad Company, as follows:

"We are receiving numerous inquiries and complaints concerning the recent changes in the schedule of pay days placed in effect by the carrier over the system. Some of these changes involve advanc-

The claim in your letter has not been made and progressed as provided in the rule and, accordingly, is not properly before me as Manager-Labor Relations, nor would it be proper for me to consider its merits at this time."

Thereafter, the Carrier heard nothing further in the matter until it received a copy of Mr. George M. Harrison's letter of September 25, 1961, addressed to the Executive Secretary of the Third Division, National Railroad Adjustment Board, advising of the Organization's intention to file with the Board an ex parte submission covering the claim.

So far as the Carrier understands the issues involved in this dispute, the questions to be determined by your Honorable Board are whether or not the claim here before it properly comes within the scope of its statutory authority to decide; and, if so, whether or not the Clerks' Rules Agreement, "as well as long established practices thereunder", were violated as the claim alleges, and if the unnamed Claimants are entitled to the compensation requested in the claim.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim arises out of Carrier's unilateral change in the method of paying wages to its employees covered by the controlling Agreement between the parties. During March, 1961, Carrier instituted a bi-weekly system of pay days for an established semi-monthly system, except in the State of New York, which by statute requires weekly payment of wages. Petitioner seeks to have the former semi-monthly system reinstated and, in addition thereto, the payment of interest at the rate of one-half of one per-cent a month from March 1, 1961, on all monies withheld by Carrier from employees as a direct result of the institution of the new system.

Carrier contends that the claim must be dismissed since it was not handled on the property in accordance with Section 3, First (i) of the Railway Labor Act and Rules 7-A-2 and 7-B-1 of the Agreement between the parties. Furthermore, Carrier asserts that no conference was held on the property in an attempt to resolve this dispute before the petition was filed with the Board, as required by the Railway Labor Act, as amended.

The record discloses that the instant claim was first presented by letter dated March 31, 1961 to the Manager-Labor Relations, Carrier's highest designated officer, without compliance with the provisions of Rules 7-A-2 and 7-B-1. Under said rules a claim or grievance must initially be presented to an employee's immediate supervisor and the decision, if unsatisfactory, may be appealed to the Superintendent of Personnel. Thereafter, an adverse decision must be directed to the Manager-Labor Relations.

Petitioner concedes that the procedures set forth in Rules 7-A-2 and 7-B-1 were not followed because the action complained of was a blanket ruling made by top management and not instituted by the immediate supervisor of any employee. Petitioner contends that the claim constitutes a class action and that the applicable procedures for processing individual grievances or claims could not be followed.

By letter dated April 11, 1961, Carrier refused to consider the merits of the claim because the subject matter had not been handled in the usual

manner required by Rule 7-B-1. Neither party requested a conference on the property after Carrier declined the claim and before it was submitted to this Board by Petitioner.

Section 3, First (i) of the Railway Labor Act expressly limits the jurisdiction of the National Railroad Adjustment Board to the consideration of disputes that have been "handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." The undisputed evidence in this case discloses that Petitioner filed the initial claim with the highest designated officer of Carrier without complying with the usual procedures for progressing claims on the property. Carrier at no time waived these requirements, and no valid basis for implying waiver has been established by Petitioner.

Petitioner merely asserts that it would have been impractical to comply with the requirements of Rule 7-B-1 because of the nature of the disputed action by Carrier, but at no time after the claim was declined did Petitioner seek a conference with Carrier in an effort to resolve the dispute on the property. Such a conference would have given the parties an opportunity to explore the issues which might have resulted in a resolution of the dispute.

Not only did Petitioner fail to comply with the prescribed procedures for handling the claim on the property as require under the Agreement between the parties and Section 3, First (i) of the Railway Labor Act, but it also made no attempt to resolve the dispute through conference before filing the petition with this Board. In accordance with the particular facts involved in this dispute and previous Awards of this Board, we are compelled to dismiss the Claim. (Awards 13571, 13120, 13097)

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 is without jurisdiction over the dispute involved herein.

AWARD

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of June 1966.

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