Award No. 16037
Docket No. CL-16513

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

ATLANTA AND WEST POINT RAIL ROAD COMPANY

THE WESTERN RAILWAY OF ALABAMA

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6086), that:

(a) The Carrier violated and has continued to violate the rules of the Clerks' Agreement of May 1, 1942, as amended, when, without conference or agreement it arbitrarily and unilaterally deducted $957.24 from the compensation which had been paid Assistant Cashier D. H. McCrary, LaGrange, Georgia Agency as result of an Agreement entered into effective April 18, 1961, and that, therefore:

(b) The Carrier shall now restore this illegal deduction of $957.24 to Assistant Cashier D. H. McCrary at LaGrange, Georgia Agency.

EMPLOYES' STATEMENT OF FACTS: In 1961 there was a coordination of the Freight House facilities of the Atlantic Coast Line Railroad Company and the Atlanta and West Point Railroad Company, and as a result thereof, an Agreement was entered into and copy of this Agreement, which is self explanatory, is hereto attached and identified as Employes' Exhibit No. 1A.

This Agreement was faithfully observed and the terms thereof completely adhered to from the effective date thereof, April 18, 1961, that is all wage increases were added to the compensation of Assistant Cashier D. H. McCrary as is contemplated in Item 1, Employe Protection, Paragraph (c) thereof, and as understood by the Brotherhood representatives who negotiated same, that is, General Chairman A. L. Groves on behalf of the Atlantic Coast Line employes and General Chairman Thad M. McConnel on behalf of the Atlanta and West Point employes, until August 24, 1965 when General Superintendent E. J. Haley addressed a letter to Assistant Cashier D. H. McCrary stating that there had been an overpayment to Mr. McCrary and concluding with the Statement that this amount of overpayment amounted to $957.24, and copy of Mr. Haley's letter, which is self explanatory, is hereto attached and identified as Employes' Exhibit No. 1.

monthly, Carrier would have to supply $100.00 monthly in order to guarantee the $500.00 he earned at the time of the consolidation; however, if claimant later bid in, or exercised seniority, to a position with a rate of pay of $450.00 monthly, then Carrier's obligation would be only $50.00 monthly. As only a flat sum is guaranteed, it naturally follows that Carrier can rightfully take credit for subsequent increases favorable to claimant, including wage increases. Through error in Carrier's time keeping department, no credit was taken for the increases, and as a result of this error Claimant D. H. McCrary was overpaid $957.54, beginning May 1, 1962, until April 1, 1965.

In addition to an alleged violation of the local consolidation agreement, petitioner, in handling this dispute on the property, is also claiming a violation of Article V, Agreement of August 21, 1954, to the effect ". . . No monetary claims shall be allowed retroactively for more than 60 days prior to the filing thereof," on the ridiculous assertion that Carrier cannot collect a simple case of overpayment beyond 60 days, and implies that Carrier is required to "file a claim." Surely such tactics will not serve to impugn the integrity of this board, as never in the history of labor relations has a Carrier "filed a claim" with an organization. Certainly, it will be recognized that the intent and purpose of this rule was to prevent claimant organization continually resurrecting old claims based on alleged violations of the agreement that had been allowed to continue uncontested over long periods of time. In handling on the property, petitioner made no attempt to furnish proof that Article V of the August 21, 1954 agreement has ever been applied on this property in the manner claimed, and there have been many cases of overpayment. Additionally, Carrier knows of no other rule or agreement requiring it to file a claim with the organization, and certainly none that prevents it from recovering an overpayment or establishes a deadline for such recovery.

As will be noted from General Superintendent's letter of August 24, 1965, to claimant, attached hereto as Carrier's Exhibit C, Carrier did not act in a harsh and capricious manner in dealing with claimant for the money which was rightfully theirs. Instead, just the opposite was true. Necessary deductions were spread over a period of twelve (12) months. No interest was charged, as is the case of some state and federal agencies where individuals have had the use of overpayments for long periods of time.

In the railroad industry, like others where large numbers of people are employed, overpayments and underpayments are fairly common, especially so in recent years with complicated rates of pay, fringe benefits, sliding scales, arbitraries, special agreements, etc. When an underpayment is discovered this Carrier acts promptly to correct same, often going to the expense of issuing a special voucher for very small amounts in favor of the employe involved. By the same token, when an overpayment is involved it should and does have the right to make recovery on a fair and equitable basis, which was all that was done in the instant case.

This dispute has been handled up to and including the highest officer on the property designated to receive same, and request that deduction be restored to claimant has been declined at each process level.

(Exhibits not reproduced.)

OPINION OF BOARD: The essential facts in this dispute are not in issue. The claim arose out of the coordination of the Freight House facilities

of the Atlantic Coast Line Railroad Company and the Atlanta and West Point Railroad Company pursuant to an "Agreement for consolidation of Station and Yard Facilities" dated November 10, 1960 and an implementing Agreement of April 18, 1961.

Claimant was guaranteed a specific amount of money per month under the formula contained in the coordination agreement of November 10, 1960, which is an adaptation of the protective provisions found in the Washington Job Protection Agreement of 1936. During the years 1962, 1964 and 1965, Claimant received certain general wage increases, but the Carrier continued to supplement Claimant's regular compensation without deducting such increases from the amount necessary to make up his monthly guarantee, which was fixed by the coordination agreement of November 10, 1960. In 1965, Carrier discovered the error and commenced deducting a monthly amount sufficient to recoup excess payments of $957.24 over a period of time. Claimant protests Carrier's action and seeks reimbursement for monies withheld by Carrier.

Petitioner avers that the original agreement dated November 10, 1960 cannot be considered by this Board because it was not mentioned on the property, and that only the Agreement of April 18, 1961 is applicable in this dispute. However, the record reveals that Carrier's Director of Personnel expressly referred to the fact that the controversy arose under the coordination agreement while the claim was considered on the property. Furthermore, the Agreement of April 18, 1961 refers to the Agreement of November 10, 1960 and specifically provides that said Agreement "will be applicable for the protection of all employes of the two Carriers who may be adversely affected by any consolidation of station and yard facilities by the Atlantic Coast Line and A&W Point LaGrange, Georgia." Consequently, we find Petitioner's contention without merit and that the basic agreement of November 10, 1960 is applicable in this case.

Initially, Carrier urges dismissal of this Claim because the parties provided a procedure for disposing of disputes arising out of the coordination agreement through arbitration. Section 2 of the November 2, 1960 Coordination Agreement modified the appeals procedure found in the Washington Job Protection Agreement by deleting the Section 13 Committee contained therein and substituting a separate arbitration procedure at the Carrier level for consideration and determination of disputes arising under the Agreement of November 2, 1960 as well as subsequent implementing agreements.

As the parties provided a method for the final disposition of claims such as is found in this case, considerations of comity clearly infer that such procedures agreed upon by the parties should be respected. (Awards 14471, 13767, 12717 and 9388.) Accordingly, we shall abstain from further action and dismiss the claim without prejudice.

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 the Claim should be dismissed without prejudice in accordance with the Opinion.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 12th day of January 1968.

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