Award Number 17574

Docket Number CL-17746

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James R. Jones, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY, AIRLINE AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES

ERIE-LACKAWANNA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6434) that:

1. Carrier failed to comply with the procedural requirements agreed upon by the parties with respect to application of Rule 41 of the Clerks' Agreement effective July 16, 1962 as well as national agreement dated August 21, 1954 when the General Manager-Labor Relations, failed to decline within 60 days from date conference was held, claim filed on behalf of Vincent J. Cull and

2. Carrier shall now allow claim as presented, i.e.

   (a) Adjust the rate of pay of General Clerk, Vincent J. Cull, who was awarded position of General Clerk under Bulletin NYD A-46 by $1.68 per day, retroactive to April 1, 1965.

EMPLOYES' STATEMENT OF FACTS: On March 23, 1965, Carrier issued Bulletin No. A-42 abolishing three (3) positions at 28th Street, New York, N.Y. (Employes' Exhibit A) and Bulletin No. A-43 abolishing position of Comptometer-Operator Clerk at Pier 28, N.R. (Duane Street) New York. (Employes' Exhibit B).

Included in Bulletin A-42 was position of Cashier, rate $22.9104 per day. Duties assigned to this position included handling of tractor-trailer tariff and demurrage work.

On March 25, 1965, Carrier issued Bulletins A-46 and A-47, establishing two (2) General Clerk positions at Hoboken Local Freight Office, Hoboken, N.J. with assigned hours 8 A.M. to 5 P.M., rest days Saturday and Sunday. (Employes' Exhibits C and D). One position was rated at $22.9104 per day (rate of the abolished Cashier's position) and the other $21.2304 per day (rate of the abolished Comptometer-Operator Clerk's position), a difference of $1.68 per day. Qualifications for each of the two General Clerk positions were identical and read:

> "Applicant must be a competent typist. Thoroughly familiar with Tractor-Trailer Tariff and demurrage Tariff. Also check and verify all trucking bills and handle all correspondence in connection with Tractor-Trailer cars and other duties as assigned."

Please advise date the new rate for the General Clerk is applied and payroll period in which adjustment is made covering the period April 1, 1965 to April 30, 1967.

On May 8, 1967, Carrier replied as follows concerning the General Chairman's allegations and also on same date replied in the same manner concerning Claim 1610 (Item 1088), see Carrier's Exhibit D.

File: 70.1-3-1129
May 8, 1967

CLERKS 1650

Mr. H. L. Beck, General Chairman
Brotherhood of Railway & Steamship Clerks
848 Engineers Building
Cleveland, Ohio 44114

Dear Mr. Beck:

This has reference to your letter dated April 15, 1967, file Claim #1650, concerning claim filed on behalf of Vincent J. Cull, Hoboken Local Freight Station, alleging violation of the Clerks' Agreement account advertising and awarding two General Clerk positions at different rates, requesting both positions be rated the same, which case was discussed in conference November 2, 1966 by you, Messrs. Schmidt, Jenkins and Vet with Messrs. Sanok and R. White.

Your allegation that this claim was allowed to outlaw by Carrier account not denied within 60 days from date of conference is not consistent with the facts. Our conference file notes show that Claim 1610 (Item 1088), Claim 1650 (Item 1129) and J. S. Claim #5 (Item C-5) were discussed at the same time and were to be further discussed in negotiating a memorandum or implementing agreement and that no decision was rendered by Carrier in conference. Before agreement could be accomplished it was necessary that further facts and information be developed in connection with various questions you raised during the conference. Thus, your allegation that Carrier has allowed this claim to outlaw is completely without merit. Moreover, there is no record of an agreement or understanding that Carrier must render its decision within 60 days following conference. If it, nevertheless, is to be your position that this claim is outlawed, it is essential for the record that, based upon the facts and reasons furnished by the Superintendent, this claim is denied.

Subsequent correspondence exchanged between the parties is evidenced by the following Exhibits:

Carrier's Exhibit E—General Chairman's letter of November 24, 1967.
Carrier's Exhibit F—Carrier's reply December 1, 1967.
Carrier's Exhibit G—General Chairman's letter of March 1, 1968.

(Exhibits Not Reproduced)

OPINION OF BOARD: The question before this Board is a procedural one. Specifically, did the Carrier fail to deny the instant claim in accordance with the provisions of Article V of the August 21, 1954, National Agreement and Rule 41 of the Clerks Agreement effective July 16, 1962?

Claimant relies upon Rule 41, paragraphs (a) (b) and (c) to support this claim. These provisions follow:

> "(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.
>
> "(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.
>
> "(c) The requirements outlined in Paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said Officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3, Second of the Railway Labor Act. It is understood, however, that the parties may be agreement in any particular case extend the 9 months period herein referred to."

The record shows that Article V and Rule 41 were modified by letter of January 19, 1955, from Carrier's Assistant Vice President White to all General Chairmen. This letter stated that the 60-day time limit provision could be extended by agreement of the parties. This extension could be effected at the time grievances are submitted to Mr. White's office by an acknowledgment in writing with the advice that the claim will be held in abeyance until discussed in conference. This was agreed to by General Chairmen.

The instant claim was filed May 8, 1965. Carrier's highest appellate officer, Vice President Labor Relations, received Claimant's appeal which was acknowledged in writing by Carrier on August 26, 1965, with the advice that the claim would be discussed at Carrier's next conference. This letter of August 26, 1965, clearly met with the provisions of the 1955 agreement. Thus, the provisions of Article V and Rule 41 were held in abeyance until conference.

Conference was held on November 2, 1966, and the record indicates that this claim was discussed. On April 25, 1967, General Chairman wrote Carrier that Carrier failed to render decision on the claim within 60 days of the conference and therefore the claim was payable. We cannot find further conclusive evidence in the record that an additional extension of time in which the time limit provisions would be held in abeyance was agreed to following the conference on November 2.

We therefore find that the time limit provisions of Article V and Rule 41 became effective following the conference on November 2, 1966. Failure of the Carrier to render a decision within 60 days of that conference or to reach agreement with General Chairman to further hold the claim in abeyance resulted in making the claim payable.

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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

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