Award No. 18047
Docket No. CL-18282

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

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

THE LONG ISLAND RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6604) that:

1. The Carrier violated the understanding and provisions of the Clerks' Agreement, particularly, the Scope Rule, Rules 2-A-1, 4-A-7, 9-A-1, 9-A-2, among others, Memorandum of Understanding No. 2 and Agreement No. 47, when it arbitrarily assigned, required or permitted employes outside the Scope of the Clerks' Agreement to perform clerical duties which are always assigned to Clerks having seniority rights under the Scope of the Clerks' Agreement.

2. This work shall be returned to the Employes covered by the Scope of the Clerks' Agreement upon whose behalf the Agreement was made in accordance with the provisions of the Railway Labor Act to perform this work.

3. The Carrier shall pay Clerk Everett A. White for each hour of each day at the rate of time and one half having deprived him of overtime by having his clerical work and other clerical work performed by employes outside of the Clerks' Agreement, effective July 8, 1967, and for each day thereafter until the violations are corrected.

4. The Carrier shall further pay the senior extra employe who did not work each day, a day's pay (8 hours) at the pro rata rate effective July 8, 1967, and each day thereafter until the violations are corrected.

5. Insofar as the Carrier failed to comply with Rule 4-D-1 of the Clerks' Agreement and the National Agreement of August 21, 1954, Article V, this claim is now payable in full.

EMPLOYES' STATEMENT OF FACTS: There is in effect a Rules Agreement effective July 1, 1945 and a revised Agreement effective January 1, 1965, which the Carrier has filed with the National Mediation Board in accordance with Sections 5, Third (e) of the Railway Labor Act, as amended,

On August 2, 1968, the General Chairman wrote Mr. Van Wart again contending that Carrier had violated Rule 4-D-1 (Time Limit) and agreeing to further discussion of the matter. A copy of that letter is attached and is identified as "Carrier's Exhibit O".

On August 6, 1968, General Chairman Hewson wrote Mr. B. W. Curry, Jr., Vice President-Administration and Finance, concerning this claim. A copy of that letter is attached and is identified as "Carrier's Exhibit P".

On September 6, 1968, General Chairman Hewson wrote Mr. W. J. Ronan, Chairman, Board of Directors, Long Island Rail Road Company and Chairman, Metropolitan Transportation Authority, concerning, among other things, the claim. A copy of that letter is attached and is identified as "Carrier's Exhibit Q".

On October 5, 1968, General Chairman Hewson wrote Mr. Van Wart again in connection with this claim. A copy of that letter is attached and is identified as "Carrier's Exhibit R".

On December 11, 1968, Carrier and the employes executed a letter agreement establishing two clerk's position at Hicksville and Jamaica. A copy of that letter is attached and is identified as "Carrier's Exhibit S".

On January 21, 1969, Mr. Van Wart wrote Mr. Hewson confirming Carrier's understanding of this matter and the agreements reached in face to face handling of the claim. A copy of that letter is attached and is identified as "Carrier's Exhibit T".

On January 30, 1969, the General Chairman wrote Mr. Van Wart repudiating the agreements reached with Carrier. A copy of that letter is attached and is identified as "Carrier's Exhibit U".

(Exhibits not reproduced.)

OPINION OF BOARD: The substance of this claim is that Carrier violated the Scope Rule and other rules by requiring or permitting employes outside the Clerks' Agreement to perform clerical duties which allegedly belonged to the clerks. The Claimant White is demanding pay for each hour of each day at time and a half effective July 8, 1967 and for each day thereafter as long as the violations continue. Another claim is submitted on behalf of the senior extra employe who did not work each day, for a day's pay (8 hours) at the pro rata rate effective July 8, 1967 and each day thereafter until the violations are corrected.

The record before us contains the correspondence between the parties relative to the issues. After several exchanges of letters on the property, an agreement was made to establish a joint Committee to investigate the situation. It was further stipulated by the Carrier and apparently assented to by the Organization that the time limitations would be suspended until sixty days after the completion of the study by the Joint Committee. The study was completed on May 15, 1968 and on July 18, 1968, the General Chairman wrote to the Carrier Official alleging a violation of Rule 4-D-1 of the Clerks' Agreement and the National Agreement of August 21, 1954, ARTICLE V. Since the sixty day time limit had expired and the Appeal of the Claim from the Organization had not been disallowed, or reason given

by the Carrier in writing for such disallowance, the Organization now demands that the claim be paid in full as presented.

The time limit rule is clear, precise and totally devoid of ambiguity. We find therefore that Carrier by failure to reply within the (60) sixty day period did in fact violate the provisions of the time limit rule. Consequently we are precluded because of this procedural error, from considering the substantive merits of the Claim itself.

As a result of the Joint Committee study, two new clerical positions were bulletined for bid on December 17, 1968 and awarded to other clerical employes on January 6, 1969. Being unable to consider the substance of these claims, this Board is left with no alternative other than to sustain the claims as presented for the period from July 8, 1967 to January 6, 1969. The claims will be sustained.

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 in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of July 1970.

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NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Interpretation No. 1 to Award No. 18047

Docket No. CL-18282

Name of Organization:

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

Name of Carrier:

THE LONG ISLAND RAIL ROAD COMPANY

Upon application of the representatives of the Employes involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to the meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, as approved June 21, 1934, the following interpretation is made:

This is a request for an interpretation of our award in the above captioned case, in which we sustained the claim as presented due to Carrier's failure to comply with the Time Limits Rule. The controversy generated by our award is directed specifically to paragraphs 3 and 4 of the original claim.

We focus our attention first on paragraph 3 of the claim which reads as follows:

> "3. The Carrier shall pay Clerk Everett A. White for each hour of each day at the rate of time and one-half having deprived him of overtime by having his clerical work and other clerical work performed by employes outside of the Clerks' Agreement, effective July 8, 1967, and for each day thereafter until the violations are corrected."

Carrier views our award as intending that Claimant White, since he had been paid 8 hours per day at the pro rata rate, is only entitled, as a result of our award, to an additional four hours per day at the pro rata rate for the period specified or a total of $4,773.60. The Organization contends that the original claim as presented (quoted INFRA), was for an additional eight (8) hours at time and a half over and above the eight hours already received at the pro rata rate.

There was some discussion to the effect that we could interpret the claim as presented to mean 24 hours per day, but we reject this contention because the word "day" as used in thousands upon thousands of claims submitted to this Board means precisely the basic 8 hours work day as provided in Rule

4-A-1(a) of the Agreement rather than the twenty-four hour calendar day. To hold otherwise could only lead to ludicrous results. See our Award 10235, quoted in pertinent part as follows:

> "A universal Rule of Construction is that where language used is susceptible to two meanings, one of which would lead to a logical or sensible result, and the other to an illogical or unreasonable result, the former interpretation is to be preferred as the result intended by the contracting parties."

Although the wording of the claim itself is not the result of both litigating parties mutually having drafted same, and therefore having a mutually agreed upon intent as might be the case in the Collective Bargaining Agreement iself, we agree with the above cited quotation as being pertinent to the instant dispute as a rule of universal applicability and construction.

Whereas the Organization has alleged that we did go into the substantive merits of this claim by cutting off Carrier's liability on January 6, 1969 rather than extending its liability to the date of the award, we cannot allow such an assertion to go uncorrected in the record. The very substance and essence of the issue was a time limit question. We decided the case on that issue and that issue alone. The Joint Committee, referred to in the record, corrected the violations on January 6, 1969. Attention is directed to the last phrase of claim "and for each day thereafter until the violations are corrected." We view this as procedural and not substantive.

The claim itself reads "for each hour of each day at the rate of time and one half having deprived him of overtime", etc. As we stated previously, we viewed the word "day" in the claim to mean the basic eight (8) hour work day. Restricted to the wording of the claim itself, we are unable to agree with Claimant's position that he was requesting an additional eight hours' pay at time and one half over and above that which he has already received, that is, eight hours' compensation at the pro rata rate. This was our understanding and intent at the time of the rendition of our award. It would have been a simple matter for Claimant to have worded his claim differently by stating that his compensation was in addition to eight hours at the pro rata rate. He did not do so, and for us to so interpret the language of the claim would be tantamount to a tortured construction of the language itself. Claimant is entitled to four hours per day during the time specified, thus amounting to time and one half as requested in the original claim.

We will now proceed to a consideration of paragraph 4 of the claim which reads as follows:

> "4. The Carrier shall further pay the senior extra employe who did not work each day, a day's pay (8 hours) at the pro rata rate effective July 8, 1967, and each day thereafter until the violations are corrected."

Carrier contends that this constitutes a claim for unnnamed employes and as such is an invalid claim. This is not a question which is in any sense new to this Board, since over the years there have been numerous awards dealing with this subject. Some awards have held that such claims are valid and have ordered a joint check of the records to identify the claimants. Others

have held them valid when claimants could be readily identified (9205); when they were easily and clearly identifiable (9248); when they were readily ascertainable (9333); when they were readily identifiable (9553); or when they can be readily ascertained and identified (9566); other awards hold that when unnamed claimants are presented, the claim ipso facto is invalid and barred because of vagueness, indefiniteness, and lacking in specificity.

We take note of the fact that we sustained the claim in its entirety as presented because of a procedural time limit violation by the Carrier. Then, as now, we did not consider the vast array of arguments on the subject of unnamed claimants, because to do so, would have meant a consideration of the substantive merits of the claim itself. This would have done violence to our own decision made strictly on procedural grounds. For us to have considered that paragraph 4 of the claim, because of unnamed claimants might have been void ad initio, would have thrust us into the substantive merits. We were precluded from doing this at that time and we are precluded from doing it now.

We take note of the fact that Carrier by letter requested the Organization to supply it with the list of extra employes affected by our decision. This letter was dated October 9, 1970, and is quoted in pertinent part as follows:

> "Insofar as Point 4 of the Statement of Claim is concerned (under which you allege the Board has ordered payment in excess of $9,500), we await information from you as to the identity of these claimants. Upon receipt of such information and our verification thereof, the Carrier will obey the order of the Board; but until such time as you furnish this information - - - which is your obligation - - - Carrier does not have information upon which it can obey the order of the Board."

We agree essentially with the Carrier that the onus is on the Organization to identify the claimants, being mindful of the numerous awards of this Board holding in effect that Carrier is under no obligation to search their records for the purpose of identifying claimants for the Organization. The Organization should take advantage of Carrier's offer and supply the names, which will be verified by the Carrier, thereby resulting in final compliance with our award. We re-affirm our sustaining award insofar as paragraph 4 is concerned based on the original procedural error committed by Carrier, and again re-assert the fact that NO substantive matters have been considered in the decision rendered in this case.

Referee John J. McGovern, who sat with the Division as a neutral member when Award No. 18047 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 28th day of January, 1972.

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