

 Award No. 18956
Docket No. CL-19092

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6865) that:

(a) The Carrier violated the Clerks' Agreement when, in abolishing eleven (11) positions in the N. Y. Seniority district, it abolished higher-rated positions, instead of lower-rated positions, abolished positions that enabled employees not covered under the Clerks' Agreement to absorb the work and abolished the position of General Foreman at Claremont Terminal, the duties and work of this position being absorbed by the Agent and the Chief Clerk at this point, both positions excepted from the Clerks' Agreement, with duties and work of this position also being absorbed by the Yard Clerk at this point having a lower rate of pay, and neither timely posted nor timely denied the claims resulting therefrom.

(b) The names of Claimants, dates on which the violation occurred, the rates of pay involved, etc., are set forth in exhibits in "Employees' Statement of Facts," which have also been furnished to the Carrier at all stages of handling.

(c) That the employees' claims as set forth in (a) and (b) hereof was presented to the Supervisor-Stations, Mr. J. C. Myers, on June 27, 1968, by District Chairman, W. A. Criger, and the Supervisor-Stations answered the General Chairman instead of Mr. Criger, thereby violating Rule 33, Time Limits, and claims must be allowed as presented by reason of default.

EMPLOYEES' STATEMENT OF FACTS: There is an Agreement as revised May 1, 1955, and subsequent thereto, referred to as the Agreement between the parties, the Lehigh Valley Railroad Company and the Brotherhood of Railway, Airline and Steamship Clerks, Freight handlers, Express and Station Employees, which Agreement is on file with the Board and by reference thereto is made a part of this statement of facts. The following is also, by reference, made a part of this statement of facts:

carrier believes, is sufficient to warrant dismissal of this dispute. Compliance with the time limit provisions, established by a national agreement, is an essential part of handling claims and grievances.

Without waiving position that this dispute should be dismissed by your board, carrier also states this claim warrants denial on the basis of the facts and lack of merit to this dispute.

The original letter of June 27, 1968 (Carrier's Exhibit "C") from District Chairman Criger to Carrier's Supervisor of Stations was not a claim, rather it was a statement or group of statements referring to eleven (11) positions abolished over a period from May 3, 1968 to and including July 1, 1968.

It is self-evident the letter of June 27, 1968 was not a claim as the District Chairman specified that "claims are being submitted for any and all employees adversely affected due to these violations" (Carrier's emphasis). The letter neither stated that it was a claim nor requested the recipient to consider it a claim, instead it clearly read "Claims are being submitted * * * (Carrier's emphasis). The aforementioned sentence of the District Chairman continues "for any and all employees adversely affected due to these violations." The letter of June 27, 1968 could not possibly be a claim because it did not specify "any and all employees adversely affected," whereas this letter indicated that claims are being submitted for any and all employees adversely affected. The aforementioned quoted sentence ends with "due to these violations" (Carrier's emphasis). The tense or time of action of the sentence is self-evident. The sentence referred to "these violations," clearly indicating that "claims are being submitted * * *."

It is the obligation of the Employees to present a proper claim in accordance with the rule and agreement requirements and to present proper evidence to substantiate their statements. No claim was made at the first level of handling and, therefore, fails at the point and is barred from further consideration beyond that point.

Letter dated August 7, 1968 from District Chairman Criger to Supervisor Stations Myers (Carrier's Exhibit "D") appears to be a belated effort to establish a claim basis. However, carrier points out such attempt fails by reason of the initial failure in letter of June 27, 1968 to establish a claim. In any event, even if the letter dated August 7, 1968, could be considered, which carrier maintains it could not, it would be too late to encompass the first five positions on the list of June 25, 1968 (Carrier's Exhibit "E") of positions abolished.

At conference with carrier's Chief of Personnel (now Director of Labor Relations and Personnel) on June 11, 1969, the General Chairman offered to withdraw all other "claims" in this dispute if carrier would restore the position of General Foreman, Claremont Terminal, and allocate the rate of pay of the position of Westbound Clerk to another position at Claremont Terminal. Carrier was not agreeable to re-establishing any of the positions involved in this dispute and maintained its position that no validity as a claim has been established and denied such request in its letter dated July 28, 1969 (Carrier's Exhibit "A").

(Exhibits not reproduced.)

OPINION OF BOARD: A reading of part (b) of Statement of Claim directs us to Employees' Exhibit No. 2 to determine the parameters of the "claim." Exhibit No. 2 is the letter dated June 27, 1968, initiating this dispute. It is

absent in any information concerning the identity of claimants or the type of reparations sought. The June 27, 1968 letter appears not to be a claim; rather, it is a statement or a group of statements referring to eleven (11) positions abolished over a period of two months. It is self-evident that the letter of June 27, 1968 was not a claim, as the author of the letter indicated that claims were to be submitted covering employees adversely affected as a result of the abolishments. The June 27, 1968 letter is vague and indefinite as to who the claimants are and what result successful settlement would produce.

We think Award 17740 is in point:

“ * * * the Board is fully cognizant of its responsibility to rule on the merits of an individual case, when and whenever possible. However, the Board feels that in the instant case the Employees have failed to attempt to set out reasonable parameters of how many claimants might be affected, who they might be, and how much back compensation might be involved. We are convinced that Employees could have been much more precise and specific, and their not having been so is fatal. * * *

Consequently, we find we must dismiss this claim because Employees failed to sustain their burden of proof as to a violation of the Agreement . . .”

We will follow that reasoning here and dismiss the case.

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 has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim dismissed.

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.