Award No. 19021

Docket No. CL-19078

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 EMPLOYES

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6861) that:

(a) Carrier violated the Clerks' Agreement when it ordered Mary Grover, stenographer, in the Traffic Dept., in Buffalo, N. Y. to assist in making up the passing reports every day and mailing out to different locations VIA U. S. MAIL.

(b) This work was formerly handled by the Yard Dept., until August 31, 1968, and the rate of the position from which it was transferred was $589.66.

(c) Mary Grover is entitled to difference in rate of pay between her rate of $546.44, per month, and rate of $589.66, which was the rate of pay from which this work was transferred, from September 5, 1968, each and every working day up to and including such time as this violation is corrected.

EMPLOYES' 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 Employes, which Agreement is on file with the Board and by reference thereto is made a part of this statement of facts.

The following Employes Exhibits are also, by reference, made a part of this Statement of Facts:

EMPLOYES EXHIBIT NO. 1, A-B-C-D:

Copies of Passing reports that are basis of this claim. These were always made out by Clerks in the Yard Dept., who have rates of pay of $589.66. Due to abolishment of Clerical positions in the Yard Dept., and heavy volume of business, they were unable to perform these

The violation of the provisions of Rule 33 (Article V of the August 21, 1954 National Agreement) of the applicable schedule agreement on this property, 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.

At Buffalo, N. Y., the passing reports have and are prepared by clerical yard forces. Prior to this claim, a number of copies were made of such reports on a copying machine by clerical yard forces and mailed by U. S. Mail to a number of offices of the Lehigh Valley Railroad Traffic Department; these copies were made from the already prepared passing reports.

To expedite these reports it was decided that the Traffic Department office at Buffalo would make the required copies of the already completed passing reports prepared by the clerical yard forces and claimant, assigned stenographer in the Traffic Department, merely assisted in making copies of these prepared passing reports and mail them VIA U. S. Mail.

There was no work performed by claimant in preparing these passing reports; the only requirement was to assist in making copies of the already prepared passing reports on a copying machine and mailing them U. S. Mail.

(Exhibits not reproduced.)

OPINION OF BOARD: At the outset of this case we must consider the contention of the Carrier that the claim should be disallowed for failure of the Organization to file this claim with the Third Division within the nine month time limit requirement of Article V of the August 21, 1954 Agreement, Rule 33 of the current agreement.

The Time Limit Rule contains a mandate that a case must be progressed to Third Division within nine months from the date it is denied by the highest designated officer of the Carrier.

As stated by Carrier:

> "Carrier's letter of denial by its highest designated officer was June 16, 1969 * * * and the Organization's written notice of intention to file ex parte submission was dated August 26, 1970 * * *"

Notwithstanding the arguments of the Organization which we carefully considered, we firmly believe that the Carrier gave no unqualified waiver of the nine month time limit for appealing claims to the division.

In view of the above, we conclude that the claim is out of time and must be dismissed.

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 not violated.

AWARD

Claim is dismissed, in keeping with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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

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