



Award No. 19164

Docket No. CL-19080

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-6864) that:

(a) The Carrier violated the Clerks' Agreement when it unilaterally and arbitrarily changed the hours of assignment of the personnel employed at the Layover Building Facility at Coxton, Pennsylvania, effective August 8, 1968.

(b) This action on the part of the Carrier was in violation of an Agreement consummated between the parties on May 15, 1956, whereby the Employees at this facility were to work eight (8) hours per day with twenty (20) minutes for lunch.

(c) The two (2) employees at this Facility Mrs. Marjorie Tompkins, and Mrs. Rosemary Judge, are entitled to one (1) hour per day at punitive rate for each and every working day from August 8, 1968, up to and including November 11, 1968. On November 12, 1968, this violation was corrected and employees affected resumed the hours of assignment they had previous to this violation.

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 Employee Exhibits are also, by reference made a part of this Statement of Facts:

EMPLOYEES EXHIBIT NO. 1 — Memo Lay over Facility

Coxton, Pennsylvania, signed and agreed to by Mr. J. J. Buckley, General Chairman and Mr. C. L. Wagner, Chief of Personnel dated May 15, 1956.

"When a meal period is allowed it will be regularly assigned between the ending of the fourth hour and the beginning of the seventh hour after starting work, unless otherwise agreed to between the management and the duly accredited representative, and the meal period shall not be changed without notice to employees at least prior to end of previous day."

As you will note, the above quoted provision permits the carrier to assign a meal period and such action could not and did not violate the agreement.

As a matter of record, due to another change in road crew assignments, effective November 12, 1968, the subject meal periods were discontinued when this change in runs permitted their elimination.

(Exhibits not reproduced.)

OPINION OF BOARD: In this case, Carrier's letter of denial signed by the highest designated officer to handle claims or grievances was dated June 18, 1969 and was in reply to the General Chairman's appeal to that officer.

The letter of written notice of intention to file ex parte submission from the Organization is dated August 26, 1970, about fourteen months after the date of denial by the highest officer of the Carrier designated to handle claims and grievances.

Since the Organization failed to comply with Rule 33 of the Agreement by not progressing the case to the Third Division within nine months of the final denial by Carrier, as required by the rule, we are barred from handling the claim and it is for that reason 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 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 Claim is barred.

AWARD

Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

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

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