NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19311
THIRD DIVISION Docket Number CL-16280

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway and Steamship Clerks,
(Freight Handlers, Express and Station Employes
(
(Erie-Lackawanna Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5937) that:

1. Carrier violated the rules of the Clerks' Agreement at Greenville, Pa., when it abolished position of Chief Clerk on March 30, 1961 and assigned a portion of the work to a lower rated position and six (6) hours work per day to the Agent, an employe not covered by the Clerks' Agreement and required him to perform the duties that formerly attached to the position of Chief Clerk and

2. That Carrier shall now compensate S. Hagash at Chief Clerk's rate of pay, retroactive to March 30, 1961 and for all subsequent dates until the violation herein complained of is corrected and

3. That the Carrier shall now compensate E. Ruffing, Ticket Clerk, for two (2) hours each day at Chief Clerk's rate, retroactive to March 30, 1961 and for all subsequent dates until the violation herein complained of is corrected and

4. That Carrier shall compensate W. L. Garts, at time and one-half rate for all time spent by the Agent performing work covered by the scope of the Clerks' Agreement previously assigned to the Chief Clerk, six (6) hours per day, retroactive to March 30, 1961 and for all subsequent dates until such time as the violation herein complained of is corrected and

5. That the work now being performed by the Agent shall be returned to the scope and coverage of the Clerks' Agreement. (Claim #1327)

OPINION OF BOARD: This claim was denied by Carrier on January 10, 1962. On March 15, 1962 Carrier sent the Organization's General Chairman the following letter:

> "It is understood that Claim 1321 (Oil City) and 1327 (Greenville) will be discussed further in conference. And that the time limit provisions of the applicable agreement are waived until such time as conference is had on these cases. Further, that although the Organization has served written notice to the Third Division, N.R.A.B., of its intention to file an ex parte submission within

"thirty (30) days of March 9, 1962, or by April 9, 1962, in claim 1320 (Franklin), Carrier will request a thirty (30) day extension in which to file its submission, for the purpose of also further discussing this case in conference."

On December 23, 1964 the General Chairman wrote to Carrier concerning compliance with a sustaining award in the Franklin claim and appended the following "also please advise with respect to claims #1321 and #1327 held in abeyance."

Carrier responded on January 27, 1965, advising that it had closed its files on claims 1321 and 1327 on May 9, 1963, and rejecting the contention that the claims had been held in abeyance. Further correspondence passed between the parties and on March 10, 1965 Carrier wrote a letter flatly rejecting the contention that claims 1321 and 1327 were held in abeyance.

It is clear that Carrier's letter of March 15, 1962 waived the time limit rule "until such time as conference is had on these cases." The record contains interpretations and allegations concerning the meaning of the March 15, 1962 letter and an alleged further verbal understanding. The Board cannot, and need not, attempt to resolve these conflicting contentions.

Carrier's March 10, 1965 letter was a disallowance of the claim and a rejection of the Organization's assertion that the claim had been held in abeyance pending the Boards' decision in the Franklin case. Rule 41 provides (in pertinent part):

".... 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 of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3, Second of the Railway Labor Act. ....."

Following Carrier's letter of March 10, 1965 the Organization had a period of nine months to institute proceedings, as provided in Rule 41. Since it failed to do so the claim 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 claim must be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1972.

LABOR MEMBER'S DISSENT TO AWARD 19311 (DOCKET CL-16280)
(Referee Edgett)

This Award is palpably and grievously erroneous, to which I register vigorous dissent for the following reasons:

This dispute, identified as Claim #1327 (Greenville), was handled on the property concurrently with similar disputes identified as Claim 1321 (Oil City) and Claim 1320 (Franklin).

Claim #1320 (Franklin) was submitted to this Board and docketed as CL-13472, resulting in Award 13125 in which claim was sustained on its merits.

Claim 1321 (Oil City) and Claim 1327 (Greenville) were submitted to this Board by separate letters of intent dated February 3, 1966. Claim 1321 (Oil City), Docket CL-16292, and Claim 1327 (Greenville), Docket CL-16280, each had records before this Board of about 150 pages. The submissions of both parties with respect to facts, arguments and citations, in many instances contained duplications or identical pages. One slight difference existed between Claim 1321 (Oil City) and Claim 1327 (Greenville) and that was that the recipient of part of the transferred work was a member of a different Union and, therefore, a Third Party issue was involved.

Subsequently, the parties on the property agreed to withdraw both claims from consideration before this Board for submission to a Public Law Board. Later, however, it was decided

to leave Claim 1327 (Greenville) before this Division because of the involvement of the Third Party issue. Claim 1321 (Oil City) was subsequently withdrawn from the Board (Docket CL-16292) for submission to Public Law Board No. 32, upon which Award No. 15 was rendered, in which the Neutral Member, Martin I. Rose, was not persuaded by the Carrier's assertions therein "that the record presents a situation which would warrant a conclusion that the claim is barred by lapse of time." That claim was sustained on its merits. Concurrent handling - as a matter of fact, exact same handling - was given to Claims 1321 and 1327, the latter of which was CL-16280 upon which Award 19311 was rendered. It is reasonable to assume that had the Greenville claim also been decided by Referee Rose, he would have reached the same conclusion because of the identical records.

At the outset, Claims 1321 and 1327 should have been settled by Carrier based on the decision rendered in Claim 1320, Award 13125 of the Third Division; this because Carrier agreed to hold those disputes in abeyance pending decision in 1320.

Failing to honor that understanding, the decision rendered by Public Law Board No. 32 in Award 15 should have been treated as precedential, in which it was properly held that the claim was not barred by lapse of time due to the circumstances revealed in that Record.

That Record revealed, as did this Record in Docket CL-16280, and the Referee quoted from Carrier's letter to the General Chairman, dated March 15, 1962:

"It is understood that Claim 1321 (Oil City) and 1327 (Greenville) will be discussed further in conference. And that the time limit provisions of the applicable agreement are waived until such time as conference is had on these cases.**."

The Referee agreed in Award 19311:

"It is clear that Carrier's letter of March 15, 1962 waived the time limit rule 'until such time as conference is had on these cases.' "

The Record in Docket CL-16292 and the Record in this Docket CL-16280 reveal that the earliest date on which conference was held was December 27, 1965; consequently, the Organization had nine (9) months from date of conference - until September 27, 1966 - to submit the disputes to the Board. The letters of intent to file the disputes were dated February 3, 1966, clearly well within the 9-month period.

There is not one iota of evidence that the time limit waiver was revoked; neither is there evidence that conference was held prior to December 27, 1965. Those two points were the criteria and, based thereon, the Referee was obligated to find that this claim was not barred by lapse of time.

Refusing to accept the obvious, the Referee bent over backwards to find that a letter of March 10, 1965, in which Carrier disallowed the claim, started the time limits to run once again - notwithstanding that such letter made no mention of the previous understanding that the time would begin to toll only after a conference had been held. The Referee, however, took it upon himself to disregard the understanding between the parties; he overturned

precedent Award No. 15 of Public Law Board No. 32 (which had before it the very same facts and evidence) without giving any reason whatever for overturning it - matter of fact he completely ignored it; he then grasped his handmade straw to enable him to throw out the claim on pseudo-procedural grounds, whereas the dispute should have been decided on its merits and sustained on its merits under the unambiguous provisions of Agreement Rule 12 (d), as was the dispute resulting in Award No. 13125 of the Third Division.

Award 19311 is totally incongruous.

J. C. Fletcher
Labor Member
7-21-72

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT
TO AWARD NO. 19311

In this particular case I must take exception to the erroneous comments made by the Labor Member in his dissent to Award No. 19311.

This Award is NOT palpably and grievously erroneous. This Award is based on the facts presented to the Referee.

As pointed out by the Carrier, it is and always has been standard practice for the parties to agree in writing whenever cases were held in abeyance pending a decision by the Board in another case. There was no such understanding in this case.

The Neutral did not have to bend over backwards to find the letter of March 10, 1965; the letter was very much in evidence, and in the Award the Neutral stated:

> "Carrier's March 10, 1965 letter was a disallowance of the claim and a rejection of the Organization's assertion that the claim had been held in abeyance pending the Board's decision in the Franklin case. * * * Following Carrier's letter of March 10, 1965 the Organization had a period of nine months to institute proceedings, as provided in Rule 41. Since it failed to do so the claim must be denied."

So, rather than being "totally incongruous", the Award follows precisely the facts disclosed in the case.

H. F. M. Braidwood

P. C. Carter

W. B. Jones

G. L. Naylor