

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19505
Docket Number CL-19312

Thomas L. Hayes, Referee

(Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
PARTIES TO DISPUTE: (
(J. F. Nash and R. C. Haldeman, Trustees of the Property
(of Lehigh Valley Railroad Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6939)
that:

(a) Carrier violated the Agreement between the parties effective May 1, 1955, as revised when it refused to fill a vacancy at Tifft Terminal, Buffalo, N.Y., 11:59 P.M. on August 5, 1969, and permitted Assistant Trainmaster G. A. Dahn, to cut cards, run and operate Flexon Writer Machine and booked Train L.V. 4

(b) Claim is submitted for a days pay at punitive rate for D. Bennett, Clerk, for August 5, 1969, due to this violation.

OPINION OF BOARD: This is the fourth dispute involving the same issue between the same Petitioner and Respondent which this Board has considered in recent months, wherein Respondent's first defense is that the Organization did not comply with the provisions of Rule 33 - Time Limits (adopted from the National Agreement of August 21, 1954) in that the Employees failed to progress the controversy to the Board within nine (9) months from the date of decision by Carrier's highest designated officer to handle claims and grievances, said letter dated April 13, 1970. The Organization's letter giving Notice of Intent to file an ex parte submission with this Division was dated January 19, 1971. The Organization is only six (6) days out of time but, nonetheless, out of time.

In this dispute, as in the three previous claims (Awards 19021, 19096 and 19164) the Organization argues that a waiver existed on time limits in which to file claims with this Board. The first time (Award 19021) we carefully considered the Organization's arguments; and, in our two subsequent decisions (19096 and 19164) we considered additional evidence submitted in support of the argument. In the instant case, we have again reviewed the entire record of handling disputes on the property.

What we stated in Award 19021 continues to hold:

"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 was not timely filed with the Board and must be dismissed.

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Docket Number CL-19312

Page 2

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 be dismissed in accordance with the Opinion,

A W A R D

Claim is dismissed, in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Executive Secretary

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