

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number **19907**  
Docket Number **MW-19761**

Frederick R. **Blackwell**, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Erie **Lackawanna** Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The Carrier violated and continues to violate the Agreement by failing and refusing to apply the wage increases provided by Sections 1 and 2 of Article I of the National Agreement dated February 10, 1971 to the occupants of positions of **B&B** Foremen. (Carrier's file M/W Representation Med. Case R-4151)

(2) The occupants of the positions of **B&B** Foremen (present occupants are Messrs. J. M. Paquet, **F.** Balicki, **C.** A. Mezzucco, A. Grimes, W. **Farley**, **F.** Carrano, J. W. Giblin, Jr., J. J. Reilly and **W. J.** Henning) be compensated for the wage loss suffered because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: On April 22, 1971, the Maintenance of Way Employees invoked the services of the National Mediation Board relative to the herein dispute, i.e., whether certain **B&B** Foremen should have received certain wage increases for the year 1970. By letter dated July 21, 1971, the National Mediation Board advised that the dispute should be resolved under the procedures in Section 3 of the Railway Labor Act. Thereafter, in January 1972, the dispute was submitted to this Board as a minor dispute under such Section 3 of the Act.

Carrier's threshold defense in the dispute is that the claim is procedurally barred because it was not instituted on the property in accordance with the established procedures. The factual basis of this defense is that all of the Organization's correspondence about the claim was directed to the General Manager-Labor Relations, whereas the established procedure on this property calls for claims to be handled first by the Division Engineer, then by the Chief Engineer, and finally by the General Manager-Labor Relations. None of these facts are disputed of record and we therefore find that the claim was initially submitted to Carrier's highest appeals officer, rather than to ~~the~~ the official authorized to receive the claim in the first instance. In dealing with an identical situation in Award 17738 (**McGovern**), this Board said:

"\* \* \* The claim was submitted directly to the Director of Labor Relations of the Carrier, normally the highest designated officer to handle appeals of claims rejected at the lower Level. Carrier responded to the General Chairman advising him that such claims must be processed through the usual channels, beginning with the Local officer etc.

We find ~~this~~ to be a most unusual situation, especially **so** when Literally thousands of claims have been processed to this Board for decision based on the provisions of Article V of the August 21, 1954 Agreement, Section 3, First (**i**) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Both the Carriers and the Organizations **have** won and lost cases based on the provisions of these citations. We find it difficult to understand why the claims were submitted to the Director of Labor Relations, because by doing so, the Organization **completely** ignored the aforementioned citations, which govern the processing of claims to this Board. Hence we are unable to consider the substantive merits of the claim, and must set it aside because of procedural defects. We will therefore dismiss the claim."

The foregoing Award and reasoning of the Board is directly applicable to the procedural facts in this dispute and we shall therefore dismiss the **claim**.

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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Paulos  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.

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(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Erie **Lackawanna** Railway Company

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood that:

(1) The Carrier violated and continues to violate the Agreement by failing and refusing to apply the wage increases provided by Sections 1 and 2 of Article I of the National Agreement dated February 10, 1971 to the occupants of positions of B&B Foremen. (Carrier's file M/W Representation Med. Case R-4151)

(2) The occupants of the positions of B&B Foremen (present occupants are Messrs. **J. M. Paquet**, **F. Balicki**, **C. A. Mezzucco**, **A. Grimes**, **W. Farley**, **F. Carrano**, **J. W. Giblin, Jr.**, **J. J. Reilly** and **W. J. Henning**) be compensated for the wage loss suffered because of the violation referred to within Part (1) of this claim.

OPINION OF BOARD: On April 22, 1971, the Maintenance of Way Employees **invoked** the services of the National Mediation Board relative to the herein dispute, i.e., whether certain **B&B** Foremen should have received certain wage increases for the year 1970. By letter dated July 21, 1971, the National Mediation Board advised that the dispute should be resolved under the procedures in Section 3 of the Railway Labor Act. Thereafter, in January 1972, the dispute was submitted to this Board as a minor dispute under such Section 3 of the Act.

Carrier's threshold defense in the dispute is that the claim is procedurally barred because it was not instituted on the property in accordance with the established procedures. The factual basis of this defense is that all of the Organization's correspondence about the claim was directed to the General Manager-Labor Relations, whereas the **established** procedure on this property calls for claims to be handled first by the **Division** Engineer, then by the Chief Engineer, and finally by the General Manager-Labor Relations. None of these facts are disputed of record and we therefore find that the claim was initially submitted to Carrier's highest appeals officer, rather than to the official authorized to receive the claim in the first instance. In dealing with an identical situation in Award 17738 (McGovern), this Board said:

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We find this to be a most unusual situation, especially so when literally thousands of claims have been processed to this **Board** for decision based on the provisions of Article V of the August 21, 1954 Agreement, Section 3, First **(1)** of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Both the Carriers and the Organizations have won and lost cases based on the provisions of these citations. We find it difficult to understand why the claims were submitted to the Director of Labor Relations, because by doing so, the Organization **com-**pletely ignored the aforementioned citations, which govern the processing of claims to this Board. Hence we are unable to consider the substantive merits of the claim, and must set it aside because of procedural defects. We **will** therefore dismiss the claim."

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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

The claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. W. Pauls  
Executive Secretary

Dated at Chicago, Illinois, this 7th day of September 1973.