

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20268
Docket Number SG-19904

Frederick R. **Blackwell**, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(George P. Baker, Richard **C. Bond**,
(**Jervis Langdon**, Jr., and **Willard Wirtz**,
(Trustees of the Property of Penn Central
(Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

(a) The Company violated Article 4, Section 20 of the Agreement when, effective July 3, 1969, it awarded Position No. 4049 as shown on Bulletin No. 563-A dated June 20, 1969, to **B. J. Ervin**, Maintainer Communications, a junior **employee**, as shown on Award **Bulletin** No. 563-B dated July 9, 1969, instead of H. E. Elmer, Maintainer **C&S**, who also made application for the position in question.

(b) H. E. Elmer, Maintainer, **C&S**, headquarters Trenton, N. J., be given the same opportunity that was afforded **B. J. Ervin** and that he (Elmer) be compensated for the differential in pay between the Asst. Foreman rate and his present rate **as Maintainer C&S** from July 3, 1969--the date Position No. 4049 became effective--and to continue until **Mr. Elmer's** rights have been rewarded **[sic]**.

OPINION OF BOARD: This **claim arose** when the Carrier decided that the Claimant was not qualified for a certain position and, for that reason, awarded the position on bid to a junior employee. Under date of July 19, 1969 a claim, in the nature of a continuing claim, was filed alleging that Carrier had wrongfully awarded the position in question to a junior employee on July 3, 1969. This claim was not denied by the Carrier until October 22, 1969, which was beyond the time limits provided by the August 21, 1954 National Agreement. By letter dated November 21, 1969, the Carrier conceded that its initial denial of the claim was not timely and it agreed to pay (and has paid) the claim for the period July 3, 1969 to October 22, 1969. In further handling on the property the **Employees** pressed the merits of the claim and also asserted that Carrier's **initial** default under the time limits rendered the Carrier liable for the entire claim as presented, i.e., beyond October 22, 1969 and until the Claimant was placed in the position. However, in their Submission to this **Board**, the **Employees** make no mention of the merits of the claim and base their right to prevail exclusively on the Carrier's failure to render a timely denial to the initial claim.

Thus, the sole issue raised by the instant record **is** whether the Carrier's failure to render **a** timely denial to the initial claim made it liable for the claim beyond October 22, **1969**, without regard to the merits, or whether the Carrier's liability under the time limits stopped when it issued its denial **letter on** October 22, **1969**, leaving the claim subsequent to such denial to be considered on its merits. In Rational Disputes Committee Decision 16, Third Division Docket CL-12336 (Article V-8-21-54 Agreement), it was stated:

"**The** Rational Disputes Committee rules that receipt of the carrier's denial letter dated December **29, 1959** stopped the carrier's **liability** arising out of its failure to comply with Article **V** of the August 21, **1954** Agreement.

DECISION: Claim for compensation for **each** day from August 16, **1959** to December 30, **1959** shall be allowed **as** presented, on the basis of failure of the carrier to comply with the requirements of Article **V** of the Agreement of August 21, 1954, but this shall not be considered as a precedent or **waiver** of the contentions of the carrier as to this claim far dates subsequent to December 30, **1959**, or as to other similar claims or grievances."

The above decision leaves no doubt that, in the facts of this dispute, the **Carrier's** liability under the time limit provisions was stopped by its October 22, **1969** letter of denial of the claim. See also **Award** 16573. The Employee have not argued the merits **of** the claim for the period subsequent to October **22, 1969** and, consequently, the merits of the claim **are** not before this **Board**. Accordingly, we shall deny 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

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The *Carrier* conceded a time limits violation and made payment therefor on the property. No merit issue was presented to the Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.