

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21450
Docket Number SG-20950

William M. Edgett, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(The Chesapeake and Ohio Railway Company
(Chesapeake District)

STATEMENT OF CLAIM: Claims of the System Committee of the Brotherhood of Railroad Signalmen on the Chesapeake and Ohio Railway Company (Chesapeake District):

Claim No. 1:

Black-Leist Claim: - SBA Award 355

(Supt. Radspinner's File: RP-SN-10)

a) The Carrier violated current provisions of the Signalmen's working Agreement and the February 7, 1965 Mediation Agreement, by removing Signalman R. M. Black, Jr., and G. W. Leist from the 'protection list' of signal **employees** and, as a result, Black was furloughed close of work day Wednesday, November 3, 1971, and Leist was furloughed close of vacation day October 29, 1971. As a result:

b) Carrier be required to restore Black and Leist back to their protective list of signal **employees**, and further be required thereafter to retain them in compensated service in accordance with provisions of Section 1, Article I, of the **February 7**, 1965 Mediation Agreement; and

c) Carrier be required to compensate Black and Leist at their applicable rate of pay as Signalmen for all loss of earnings from date of furlough as cited in part (a). In addition, the Carrier make necessary payments in order to make Claimants whole for any and all loss, including payments toward Railroad Retirement, **C&O** Hospital Association dues, Travelers, and credit for such loss of time toward vacation and/or holidays; and

d) Inasmuch as this is a continuing violation, said claim is to cover the period of time until Carrier takes the necessary corrective action to comply with parts (a), (b) and (c) above.

/Carrier's file: 1-SG-2957

Claim No. 2:

Cyrus Claim - SBA Award 356

(Supt. Radspinner's File: RP-SN-11)

a) The Carrier violated current provisions of the February 7, 1965 Mediation Agreement, particularly Section 1 of Article 1, and Sections 2

and 6 of Article IV, when Claimant was furloughed close of vacation day October 22, 1971. As a result:

b) Carrier hereafter offer Claimant employment equivalent to his 'base period' as contemplated in Section 1 of Article I, and Section 2 of Article IV; and,

c) Carrier provide us with Claimant's base period of compensation earned and paid during the last twelve months in which he performed compensated service immediately preceding the date of the Agreement - February 7, 1965; and,

d) Carrier compensate Claimant for all loss of earnings which are less than his protected monthly base rate due under Section 2 of Article IV. In addition, Carrier make necessary payments in order to make Claimant whole for any and all other loss, including payments toward his Railroad Retirement, **C&O** Hospital Association dues, Travelers, and credit for loss of time toward vacation and/or holidays; and,

e) Inasmuch as this is a continuing violation, said claim is to be retroactively 60 days prior to the filing of same (December 22, 1971) and is to further cover the period of time until Carrier takes necessary corrective action to comply with the above mentioned violations.

[Carrier file: 1-SG-301]

NOTE: The foregoing Statements of Claim are shown in their entirety as presented to the highest officer of the Carrier designated to handle such matters. **However,** most of the issues covered by the above have been settled. Our **ex parte** submission herein will cover the following:

Carrier's refusal to reimburse Claimants, Leist and Cyrus in the amounts of \$12.25 each for **C&O Employees'** Hospital Association **dues paid** by them to cover period furloughed.

OPINION OF BOARD: The Brotherhood took the claims of three **employees** who alleged that Carrier had been wrong when it denied **them** protective benefits to **SBA 605**. The Board sustained their claims except a claim which included their **C & O** Hospital Association dues. **SBA 605** dismissed that part of the claim, on jurisdictional grounds in one instance, and **in** the other instance said:

"the claim in paragraph (d) for fringe benefits is dismissed without prejudice."

The Organization promptly filed a claim with Carrier seeking payment of the Hospital Association dues which claimants had paid while they had been furloughed, **and** upon Carrier's denial of the claim they progressed it to this Board.

Carrier denied the claim on several grounds. First it said that the claim is barred **by Rule 59(c) - Time limit on claims.** Rule 59(c) reads:

**"RULE 59--TIME LIMITS FOR PRESENTING AND PROGRESSING
CLAIMS OR GRIEVANCES.**

* * *

(c) ******* All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from date of said officer's decision proceedings are instituted by the **employee** 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, It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The claim for "fringe benefits" before this Board is identical to the **claim** submitted to **SBA 605**. More than 9 months elapsed from the date Carrier's highest designated officer gave his decision on it. The Board is required to apply the parties' agreement as it is written and it clearly says that claims which are not appealed within 9 months **are** barred. X-1

The fact that **SBA 605** did not decide the "fringe benefit" part of the claim cannot operate to extend the time. A party is required to choose the correct forum. If **SBA 605** was not the correct forum and was without jurisdiction to determine the matters the Brotherhood took to it, that fact cannot operate to extend the time limits the parties agreed upon for appealing matters to this Board. X-2

Obviously the equities in this matter **cannot be** considered. -The inclination to make bad "law" because of the "equities" is one which must be resisted if agreements are to be given their correct meaning. Here the entire claim was denied by Carrier. The entire claim **was taken** to **SBA 605**. More than 9 months after Carrier's denial, **SBA 605** decided that it did not have "jurisdiction" of part of the claim in one instance and dismissed part of the claim without deciding it in another. We are bound by the limitations the parties created and have no basis upon which to extend them because of **SBA 605's** dismissal. X-3

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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 is barred.

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 18th day of **March 1977**.

