

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21983

Docket Number CL-21834

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: ((Brotherhood of Railway, Airline and
('Steamship Clerks, Freight Handlers,
(Express and Station **Employees**
(Norfolk and Western Railway **Company**

STATEMENT OF CLAIM: Claim of the System **Committee** of the Brotherhood
(GL-8216) that:

1. Carrier violated and continues to violate **the** Agreement between the parties when on February 6, 1975, the position of Telegraph Operator Relief No. 1 was abolished and work of **that position assigned** to clerical positions and to non-contract clerical positions without proper notice under Article VIII, **Section 3** of the **February 25, 1971** Agreement.

2. Claimant Mr. P. Long shall be allowed **the** protection afforded by Article VIII, Section 6 of the February 25, 1971 **Agreement.**

OPINION OF BOARD: The Organization claims that the Carrier is **in** violation of Article VIII, Section 3 of the February 25, 1971 Agreement referring to Clerk-Telegrapher consolidation of positions for failure to give proper notice. The Organization further argues that **the** Claimant should receive the protection **specified** in Article VIII, Section 6 of the February 25, 1971, **Agreement.**

The claims arose from actions taken by the **Carrier in** abolishing **the** position of Telegraph Operator **Relief No. 1 on February 6, 1975. Simultaneous** with the action, the incumbent **employee claimed** a posted job **which** had been filled on a temporary basis by **the** Claimant, who went to the Extra List and was subsequently furloughed.

The claim was processed **in** order through **the** Carrier's highest designated officer, who denied the claim **on** July 1, 1975.

A conference was held on August 18 or 28, 1975, concerning **the** Carrier's answer. On March 25, 1976, the Organization wrote to the Carrier's highest designated officer, **providing information claiming** to refute "the stat-t made in your letter of July 1, 1975."

There is **no** record of reply of any **kind** from the Carrier. By letter of May 28, 1976, the Organization notified the **National** Railroad Adjustment Board of its intention **to bring** the matter to **the Board**.

Rule 38 - **TIME** LIMIT ON **CLAIMS**, Paragraph **(c)** reads **in** 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 **employee** or his duly authorized **representative** before the appropriate division of the National Railroad Adjustment Board . . . It is understood, **however, that** the parties may by **agreement** in any particular case **extend** the 9 months' period herein referred to."

There is no written record of agreement for any time-period extension.

Clearly more than nine months elapsed between the Carrier's answer and the filing of the claim with the Board. Award **No. 17977 (Dorsey)** covers this point:

"As to the contention of the Petitioner that **the nine** months' limit began from the date of conference on September 11, 1968, the rule is clear in providing that, the nine months' period may be extended by agreement. The record contains no evidence of an agreement to extend that period. This Board has consistently held that **where** precise time limits exist they must be complied with unless waived by the parties; but, neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as **time** limit extension agreements. (Awards 13941, 12417, 11777, 11597, 10347, among others.)"

Having found that the claim must be dismissed by the specified intent and Language of the parties' Agreement, any discussion of the merits by the **Board** would be both improper and futile.

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;

Award Number 21983
Docket Number CL-21834

Page 3

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; end

That the claim be 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 31st day of March 1978.