

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29311
Docket No. TD-28673
92-3-89-3-128

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

(American Train Dispatchers Association
PARTIES TO DISPUTE: (
(Kansas City Southern Railway Company

STATEMENT OF CLAIM:

CLAIM #1 - Carrier file 013.34-11

Claim in behalf of Train Dispatcher T. A. Tucker for four (4) hours pay at the overtime rate July 21, 1985 and four (4) hours pay at the overtime rate July 22, 1985, or permitting and/or required an employee not covered by agreement to perform service on Second Trick KCS on July 21, 1985, and July 22, 1985 denying T. A. Tucker his agreement rights of Article 2(b).

CLAIM #2 - Carrier file 013.34-12

Claim of Train Dispatcher S. J. Fleming for four (4) hours pay at the overtime rate July 21, 1985, and four (4) hours pay at the overtime rate July 22, 1985, for permitting and/or required an employee not covered by the agreement to perform service on Second Trick KCS on July 21, 1985, and July 22, 1985, denying S. J. Fleming his agreement rights of Article 2(c)."

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

On July 21 and 22, 1985, the claim dates involved in this dispute, both Claimants were working as Train Dispatchers at Shreveport, Louisiana. The Carrier and the Louisiana and Arkansas Railway have a joint train dispatching office at that location. There are separate Carrier and Louisiana and Arkansas Railway Trick Train Dispatcher positions on each shift, and a joint Chief or Assistant Chief Dispatchers.

On the dates in question, a vacancy arose on the second shift Louisiana and Arkansas Trick Train Dispatcher position. There were no Extra Train Dispatchers available. The regularly assigned second shift Carrier Trick Train Dispatcher was transferred to fill the Louisiana and Arkansas vacancy, and an officer in Carrier's engineering department, was used to fill the resulting second shift Carrier vacancy. The Organization contends that the first shift Carrier Train Dispatcher should have been assigned to work four additional hours, and the third shift Train Dispatcher should have been called to report for duty four hours early.

The record before this Board shows that the claims were denied by Carrier's highest officer on November 11, 1985. Carrier reaffirmed its denial of both claims on November 14, 1985. The last correspondence pertaining to the instant claims is a letter from the Organization to the Carrier dated November 23, 1985, indicating that the matter was being forwarded to the President of the Association "for further handling in accordance with the provisions of the agreement and the Railway Labor Act, as amended." No other correspondence was exchanged between the parties until March 20, 1989, when the Organization filed notice of its intention to file an Ex Parte Submission with the Board in connection with the instant disputes.

At the outset, Carrier invokes the doctrine of laches as a bar to the claims. It contends that a delay of nearly three and one-half years between the final denial by the Carrier and appeal to this Board requires dismissal of these claims. Carrier further argues that it had a right to assume after this long period of time that the Organization had accepted its determination of the issue. The purpose of the Act would be frustrated if disputes could be held in abeyance and raised again at any future time, Carrier stresses.

The Organization advances no explanation for the delay of approximately three and one-half years in progressing these claims to the Board, nor does it argue that extenuating conditions are here present. Instead, it asserts that Carrier's position, based on the defense of laches, must be supported by a showing of prejudicial harm or detriment. Absent such a showing, the Organization submits that these claims must be sustained on the merits.


This Board has carefully reviewed the numerous precedent Awards cited by the parties. It is clear that the Board has frequently held that even in the absence of contractual or statutory time limits, as here, failure of a party to process a claim within a reasonable period of time generally bars further consideration of the claim. Third Division Awards 8543, 8837, 10544, 13239, 13307, 13644, 25946. While there are several Awards which have reached a contrary conclusion, it is our view that the majority, and the better reasoned decisions, are based on sound policy promoting the expeditious resolution of disputes. The express language in Section 2 of the Railway Labor Act

states that one of the general purposes of the Act is "to provide for the prompt ... settlement of all disputes growing out of grievances ..." To permit claims to slumber for an unduly prolonged period of time runs counter to that expressed intent. Accordingly, we find that Claimants are now barred from processing the instant claims before us.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: 
Nancy J. Devor - Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1992.