Award No. 4628
Docket No. CL-4703

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Charles S. Connell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

THE DELAWARE AND HUDSON RAILROAD CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Carrier violated Rule 30 of the current Clerks' Agreement by requiring three Crew Dispatchers at Oneonta, New York to work seven (7) days per week at pro rata of pay, and that

(a) Crew Dispatcher A. J. Boland shall now be allowed the difference between what he was paid (pro rata rate) and overtime rate for all Sunday and holiday service performed subsequent to May 7, 1947, and that

(b) Crew Dispatcher M. H. Jackson shall now be allowed the difference between what he was paid (pro rata rate) and overtime rate for all Sunday and holiday service performed subsequent to May 7, 1947, and that

(c) Crew Dispatcher R. A. Wheeler shall now be allowed the difference between what he was paid (pro rata rate) and overtime rate for all Sunday and holiday service performed subsequent to May 7, 1947.

EMPLOYES' STATEMENT OF FACTS: Crew Dispatchers A. J. Boland, M. H. Jackson and R. A. Wheeler have for many years been regularly assigned to their present positions, covering the twenty-four (24) hour period of the day, on a seven (7) day per week basis and have been paid under the provisions of Rule 30 (c).

Under date of May 7, 1947 these three employes filed with Trainmaster R. N. Clemons a joint request for permission to convert their assignments from a seven (7) day per week basis to a six (6) day per week basis at the earliest possible date.

Under date of May 15, 1947 a reply was received from the Trainmaster, jointly addressed to the affected employes, reading as follows:

"We are still handicapped with a shortage of Clerks who are able or willing to qualify for your positions. We will be further handicapped shortly by the vacation schedule. However, your request will be given consideration as soon as possible to do so."

POSITION OF EMPLOYES: There is in evidence an Agreement between the parties hereto bearing effective date of January 1, 1941 in which the following Rules appear:

"ARTICLE NO. 5—Discipline, Appeals, Representation

RULE 45 (b)—Should an employe believe he has been unjustly dealt with, he may handle his case with the proper official. If the result is unsatisfactory, he will have the right to appeal, in writing, to the higher officials in their respective order designated to handle such matters, and where possible conferences will be granted within thirty (30) days of application. The case may be handled either by the employe personally or by his duly authorized representative. If the final decision is in his favor, he shall be reinstated and compensated for any wage loss.

(d)—Any case relating to protested discipline or alleged violation arising from the application or interpretation of this agreement should be presented promptly and retroactive adjustment beyond ninety (90) days prior to date claim is filed will not be made."

After these employes were advised by the Train Master on May 15, 1947 with reference to their request, they did not acknowledge nor protest same. It was not until October 6, 1948 that the employes' representative presented a claim based on an alleged violation of agreement rules.

It cannot be conceived that a request to change a working condition, denied under date of May 15, 1947, which resulted in no monetary loss to employes, can, after over one (1) year and five (5) months, be advanced as a period of time in which to claim pay.

OPINION OF BOARD: The question before the Board is whether the joint letter of claimants addressed to the Train Master under date of May 9, 1947, was a proper request to have their seven day positions converted to six days in accordance with the terms of the Agreement. Award No. 4072 is controlling and states that since the positions were not in an isolated point, that claimants were entitled to have their positions converted to a six-day assignment when they requested it.

The claimants wrote the joint letter of May 9, 1947 to their next superior under the belief that they had the right to change their positions to six-day per week positions under Rule 30(c). The reply indicates that the Train Master did not believe that right existed. At this point it should have been apparent to the claimants or their Organization that there was a violation arising from the application or interpretation of this Agreement. Right at this point, the claimants should have felt or believed they were unjustly dealt with.

The only rule in this Agreement that deals with the question of unjust treatment is Rule 45, and it is also the only rule dealing with the matter of making claim and perfecting appeal, and the provisions of Rule 45 should have been followed by the Employes. But if we were to agree with the Employes, that Rule 45 has no application in this matter, then we must look to the Railway Labor Act. Sec. 3(i) of the Act provides that disputes shall be handled in the usual manner up to and including the chief operating officer of the Carrier designed to handle disputes, and, failing to reach an adjustment, they may be referred by petition to the appropriate division of this Board. Our jurisdiction comes from that section of the Railway Labor Act. Had this matter come to the Board with no further action on the part of the parties other than the letters of May 9, 1947, we feel sure the Board would not have found jurisdiction in the matter, or until claim had been made in the usual manner up to the chief operating officer of the Carrier designed to handle disputes. The Claimants, or their representatives, had the right to proceed in the usual manner to protect their claims, to establish the date of their request and to put the Carrier on proper notice that an adjudication of the claim would be retroactive to that date, and having that right it was their duty to so proceed. They were well aware of the usual procedure to be followed. The General Chairman on September 9, 1948, about a month after the issuance of Award No. 4072, presented a claim on behalf of claimants addressed to the General Superintendent of Transportation. His answer stated that the claim had not been presented in the usual manner, and on October 6, 1948, the General Chairman

handled this claim in the usual manner with the Superintendent, and the instant claim resulted. Rules of procedure in any dispute may at times seem harsh, but they are necessary to protect rights, for laxity may lead to countless injustices.

The joint letter of claimants dated May 7, 1947 stated that if the change of their positions to a six-day per week basis could be arranged, they would like to have it made effective as soon as possible. It did not state that the Carrier was in violation of the Agreement upon failure to make the change, and it did not state that the letter was a formal request under Rule 30. The claimants stayed on their positions and no further action was taken by them for more than a year. The Carrier had every right to believe the claimants were satisfied to await the change until the Carrier found it possible to do so. In Award 4072 the facts can be distinguished from the instant case, for there the claimants gave notice to the Carrier on December 14, 1946 of the desire to convert to six days per week, the Carrier stated it could not do so at that time, the claimants then proceeded in the usual manner and were awarded their claim retroactive to December 14, 1946. The Board is of the opinion that this case should be determined in the same manner and since the Carrier did promptly, upon proper submission of the claim, convert the seven-day positions here involved to six-day positions, no retroactive back payment is justified.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 15th day of November, 1949.