# Award No. 5571
# Docket No. CL-5637

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

Francis J. Robertson, Referee

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## PARTIES TO DISPUTE:

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

## THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(a) The Carrier has refused, and continues to refuse, to fully comply with the terms of understanding and/or agreement dated January 6, 1949, between this Brotherhood and the Pennsylvania Railroad Company, in applying Third Division Award 4087.

(b) M. M. Proto, Dining Car Department, be compensated at the rate of time and one-half for all stated hours worked in excess of his regular tour of duty for the years 1946 and 1947. (Docket G-72)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes in which the Claimant in this case held a position and the Pennsylvania Railroad Company—hereinafter referred to as the Brotherhood and the Carrier, respectively.

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

M. M. Proto, the Claimant in this case, is an employe holding a regular position in the capacity of Chief Timekeeper, which is a position covered by the Scope of that Rules Agreement, having seniority standing in Group 1, Dining Car Department, of the Carrier.

The position of Chief Timekeeper is one of the positions listed in Paragraph III-1-B(1) (Page 11), Supplemental Agreement "A" of the Master Agreement, effective May 1, 1942.

Under date of August 12, 1948, the National Railroad Adjustment Board, by order of the Third Division, rendered its Award 4087, involving

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

**OPINION OF BOARD:** On January 6, 1949, the Carrier and Employes entered into a letter Agreement regarding the application of Award 4087 of this Board. Under that Agreement compensation claimed for holders of certain excepted positions (of which Claimant was one) under Award 4087 was to be limited to the difference between the monthly increase actually allowed and what would have been allowed if calculated on the basis of 243⅓ hours per month during the period December 1, 1943, to May 15, 1946. The final settlement was in the form of a letter proposal made by the management to the General Chairman of the Clerks' Organization and accepted by him. Among other things it was stated in that letter that the proposal for the establishment of the aforesaid treatment of compensation claimed under Award 4087 was made upon the understanding and Agreement:

> "(a) That following May 15, 1946, overtime has been allowed to these employes and the positions in question have comprehended a tour of duty of 204 hours per month since that date;
>
> (b) That the applicable overtime rules (Rule 4) of the Master Agreement be applied to these positions and employes from and after May 15, 1946;"

Claim has been filed on behalf of the claimant, Proto, for overtime worked on his position from May 17, 1946, to September 18, 1947.

The Carrier in rejecting this claim has placed reliance upon Rule 7-B-1(a) which in so far as pertinent to this issue provides as follows:

> "7-B-1. (a) Claims for compensation alleged to be due, may be made only by an employe or by the 'duly accredited representative' as that term is defined in this Agreement, on his behalf, and must be presented, in writing, to the employe's immediate Supervisor within ninety days from the date the employe received his pay check for the pay period involved, except: . . ."

Carrier contends that inasmuch as the first claim made on behalf of Claimant for the overtime involved was by letter of the Local Chairman to the Chief Clerk, Dining Car Department, on February 9, 1949, more than ninety days from the date of receipt of the check for the pay period involved, this claim is not enforceable. Carrier further contends that Rule III-1-B of Supplemental Agreement "A" lists Claimant's position as one of those excepted from that portion of Rule 7-B-1 which permits presentation of a claim by other than the individual employe involved. Carrier, therefore, argues that inasmuch as the claim has been made by the Local Chairman and not by the Claimant personally it should fall for that reason.

We cannot subscribe to these contentions of Carrier. The Claimant was one of those claimants involved in the Statement of Claim made by the Organization upon which Award 4087 was founded. By the Agreement of January 6, 1949, the parties adopted their own formula for the application of Award 4087. Instead of applying a continuing increase in the rates of positions such as that occupied by Claimant as required by Award 4087, they applied a pro tem increase up to May 16, 1946, and thereafter applied the overtime rules of the Agreement, it being represented by the Carrier that overtime had been paid on such positions since that time. The assertion of a right to the compensation now claimed on behalf of the Claimant is founded upon the claim made by him in Award 4087. That claim (which Carrier does not contend was improperly or untimely filed) was pending at the time of the agreed application of Award 4087 and has not been adjusted until this date by reason of the fact that one of the conditions set forth

in the substitute for the literal application of Award 4087 has not been met by the Carrier. It is true that Award 4087 did not determine that Claimant was entitled to overtime but the formula provided for in the understanding reached in the letter of January 6, 1949, takes the place of the formula found to be correct in Award 4087 and is applicable to individuals involved in the Statement of Claim upon which Award 4087 was founded. This claim is, in effect, a continuation of the claim made in Award 4087 and as such cannot be considered in this docket as subject to the provisions of Rule 7-B-1(a). For the same reason the contention of the Carrier with respect to the personal filing of the claim is untenable.

Of course, nothing in this Opinion is to be construed as applicable to any claims arising because of overtime performed after date of January 6, 1949.

**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 Employe involved in this dispute are respectively Carrier and Employe 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 this claim is a continuation of the claim filed under Award 4087 and that Carrier has failed to comply with the agreed application of Award 4087 as it affects the Claimant's right to compensation thereunder.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 20th day of November, 1951.