

Award No. 7074

Docket No. TE-6846

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Edward F. Carter, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**BOSTON AND MAINE RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Boston and Maine Railroad, that:

(1) The Carrier violated the terms of the agreement between the parties when and because it refused to compensate the occupant of the regular rest day relief position covering Rockport and Woburn, Massachusetts for travel time between these two stations one day each week commencing August 7, 1950; and

(2) The Carrier shall now be required to pay the occupant of this rest day relief position travel time covering a period of four hours and one minute at the rate of the position claimant was scheduled to work at Woburn, one day each week commencing August 7, 1950, and continuing until the violation is corrected.

**EMPLOYEES' STATEMENT OF FACTS:** Carrier maintains on its railroad a rest day relief position which at the time of this claim was regularly assigned to L. L. Hodgkins embracing the rest day relief work on the following positions:

Relief Day	Location	Assigned Hours
Thursday	Rockport	1:00 pm to 9:00 pm
Friday	Rockport	1:00 pm to 9:00 pm
Saturday	Rockport	1:00 pm to 9:00 pm
Sunday	Rockport	1:45 pm to 9:45 pm
Monday	Woburn	1:30 pm to 9:30 pm

Rest Days — Tuesday and Wednesday

Headquarters — Rockport.

All of these stations are located in the State of Massachusetts.

The headquarters point under the rules, is designated by the Carrier and since the occupant of the rest day relief position in this case was required to work four days each week at Rockport, the Carrier designated Rockport as his headquarters. This meant that the occupant of the relief position would be paid for travel time, or mileage, between the headquarters point and other places in the relief schedule. In the instant case, since Rockport was the headquarters point and free rail transportation was available and reasonable, the organization contends that each Monday the occupant of the rest day relief position was required to work at Woburn he was entitled to be paid at the rate

The claim should be denied.

All data and arguments herein contained have been presented to the Organization in conference and/or correspondence.

**OPINION OF BOARD:** Claimant was a regularly assigned relief employee with his headquarters designated as Rockport, Massachusetts. He was assigned to work at Rockport, Thursday through Sunday, and at Woburn, Massachusetts, on Monday. Claimant contends he has not been properly paid for travel and waiting time for each Monday he was required to work at Woburn since August 7, 1950.

Claimant maintained his residence at Melrose, Massachusetts, which was 35 miles from Rockport and 8 miles from Woburn. The distance by rail from Rockport to Woburn is about 45 miles. Claimant used his automobile from Melrose to Rockport on four days of his assignment and from Melrose to Woburn on the fifth day of his position. Claimant is not entitled to travel and waiting time for the four days he drives to and returns from Rockport, it being his assigned home station. The Carrier paid Claimant on a mileage basis for the use of his car from Melrose to Woburn and return, in filling his one day relief assignment at the latter point. Claimant contends he is entitled to be paid on the basis of rail travel and waiting time in going to Woburn from Rockport, his designated headquarters point, and return, involving 7 hours one minute travel and waiting time.

The record shows that this claim was progressed in the usual manner and finally declined by Carrier's Chief of Personnel on June 1, 1951. On October 9, 1953, 28 months after the claim was declined, notice of appeal to this Board was given. Carrier asserts that the time for appeal had lapsed and that further consideration should not be had because of that fact.

As we have stated, the claim was denied on June 1, 1951, by Carrier's Chief of Personnel. On December 18, 1952, 18 months later, the General Chairman wrote the Carrier:

"I would like to discuss the above numbered claim with you at your convenience."

On December 22, 1952, Carrier's Chief of Personnel wrote the General Chairman in part as follows:

"Before proceeding further I want to point out that on June 1, 1951, a year and a half ago, I declined this claim to Former General Chairman Hill and have heard nothing from it since. I think it is too late to bring it up now. However, if you care to, we can discuss this at your meeting scheduled for Tuesday, December 30th."

After the December 30, 1952, conference, the Chief of Personnel wrote the General Chairman as follows:

"At the conference in my office on December 30, 1952, you brought up the disposition of this case and I told you, as I had previously written you, that it had been finally decided long ago and was not open to further discussion. I declined the claim over a year ago and it is still declined."

On January 3, 1953, the General Chairman wrote the Chief of Personnel as follows:

"Your decision is not satisfactory, hence the matter will be appropriately appealed."

A notice of intention to file the claim with this Board was filed on October 9, 1953, more than ten months later. The controlling rule in cases of this kind is set forth in Award 4941 as follows:

"While it is true that a time limit in which an appeal must be taken to this Board from an adverse determination by a Carrier is not stated in the Act, or in the agreement before us, it is contemplated that disputes arising under it shall be handled expeditiously. The parties are entitled to a reasonable time to appeal in the light of all the circumstances. \* \* \* For almost three years the Organization took no steps to bring the claim to this Board. The elapsed period exceeded that which could be said to be reasonable until all the circumstances shown. The Carrier had a right to assume after a period of approximately three years that the Organization had accepted the Carrier's determination of the issue."

In the case before us, the Organization failed to do anything for 18 months after a final declination by the Carrier. The Carrier asserted the long delay as a defense and again declined the claim. For an additional 10 months the Organization slept on any rights that it may have had. The unconscionable delay was again asserted when the claim came to this Board. There was no waiver of the delay on the part of the Carrier. We are required to say that the delay in the handling of this claim is not only unreasonable, but inexcusable. It is denied under the holdings of Awards 4941 and 6229.

We have taken note of other awards of this Division (6308, 6351, 6721) which hold that in the absence of agreement or Congressional action, that appeals to this Board may be taken at any time and that no limitation whatever is placed thereon. The Railway Labor Act contemplates the prompt and orderly settlement of disputes. Stale claims will not be considered. Attempted appeals to this Board after unreasonable and unconscionable delay fall in the same category. It is fundamental that where a specific date is not fixed in a contract for the assertion of a right that a reasonable time under the circumstances affords the proper yardstick. To permit such delayed appeals could work untold harm by permitting running claims to accumulate in size after the Carrier had been lulled into a sense of security by such delay. Certainly a delay of 28 months is not a reasonable time in which to assert the right of appeal to this Board. The appeal not having been taken in a reasonable time, the appeal must be dismissed.

**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 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; and

That the attempted appeal is out of time.

#### AWARD

Appeal dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon  
Secretary

Dated at Chicago, Illinois, this 28th day of July, 1955.