Award No. 7655
Docket No. PC-7823

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

James P. Carey, Jr., Referee

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN, PULLMAN SYSTEM

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: The Order of Railway Conductors and Brakemen, Pullman System, claims for and in behalf of Conductor E. F. Carlson, Milwaukee District, that:

1. Rule 52(a) of the Agreement between the Chicago, Milwaukee, St. Paul and Pacific Railroad Company and the Order of Railway Conductors was violated by the Company on July 3, 1953, when it operated Milwaukee Train No. 9-8 carrying two Milwaukee sleeping cars in service between Pembine, Wis., and Sault Ste. Marie, Mich., without Milwaukee Sleeping Car Conductors.

2. Conductor Carlson, who was entitled to these assignments, be credited and paid under the appropriate rules of the Agreement for these trips (Pembine to Sault Ste. Marie in road service, Sault Ste. Marie to Pembine in deadhead service).

EMPLOYES' STATEMENT OF FACTS:

I.

On two occasions in the year 1952 (July 19 and August 2), two Milwaukee sleeping cars were operated on Train No. 9 between Pembine, Wis., and Sault Ste. Marie, Mich., without the services of a Milwaukee Sleeping Car Conductor.

On August 16, 1952, claim was filed by the ORC on behalf of Conductor E. F. Carlson, contending that this Conductor was entitled to compensation for a trip Pembine to Sault Ste. Marie in road service and for a trip Sault Ste. Marie to Pembine in deadhead service.

In the course of the present year, 1955 (May 26) your Honorable Board issued Award No. 6990 sustaining this claim. The "Statement of Claim", "Opinion of Board" and "Award" in Award No. 6990 are attached hereto as Exhibit No. 1.

ask whether or not I am agreeable to disposing of the claim in behalf of Conductor Snyder on the same basis as the claim of Conductor Carlson is disposed of.

"In view of the fact that the same principle is involved, I am agreeable to disposing of the claim of Conductor Snyder on the same basis that the claim of Conductor Carlson is disposed of providing you are likewise agreeable to such disposition and will so advise."

Mr. Wise then wrote Mr. Downing as follows under date of August 24, 1953:

Acknowledging your letter of August 19th in which you state that you are agreeable to disposing of the claim filed in behalf of Conductor E. T. Snyder on the basis of the outcome of the claim made for Conductor Carlson because he was not used on two Milwaukee sleeping cars between Pembine and Sault Ste. Marie under dates of July 19th and August 2nd, 1952.

"This is to advise that I am agreeable to disposing of the claim involving Conductor Snyder on the basis of the outcome of the claim involving Conductor Carlson."

From the last three letters quoted above it will be seen that in connection with claim in behalf of Conductor E. T. Snyder, identical to the one covered by Docket PC-6790, the employe's representative appealed the claim to the Assistant to Vice President on May 6, 1953 and there resulted the understanding that this claim would be disposed of in accordance with the disposition of the claim of Conductor Carlson covered by Docket PC-6790. The claim of Conductor E. T. Snyder was accordingly disposed of after Award 6990 was rendered as will be noted from Mr. Downing's letter of July 21, 1955 to Mr. Wise reading:

"Reference is made to conference in this office today during which you made mention of Third Division Award 6990 and I advised you that the adjustment had been made to Mr. Carlson in accordance with the Award of the Board.

"You also referred to the fact that we had agreed, in our letter of August 19, 1953, to apply the principle of the award in this case to the claim of E. T. Snyder, July 27, 1952, and arrangements will be made accordingly."

However, at no time prior to Mr. Wise's letter of July 21, 1955 (quoted on Pages 1 and 2 hereof) was the claim of Conductor E. F. Carlson, July 3, 1953, appealed or presented in any manner to the Assistant to Vice President nor was any understanding had at any time that it would be disposed of in accordance with the award rendered in Docket PC-6790.

This claim now before your Board was declined after hearing, by the Superintendent on October 1, 1953 and there was no further handling of that claim with the Carrier until July 21, 1955. Accordingly, it is the Carrier's position that this claim has not been handled in accordance with the provisions of Rule 41 and is therefore barred.

The Carrier respectfully requests that the claim be denied.

All data contained herein has been presented to the employes.

(Exhibits not reproduced).

OPINION OF BOARD: This claim was submitted on the property August 27, 1953, and declined by the Superintendent October 1, 1953, following a hearing. On October 9, 1953, claimant's representative wrote Carrier's superintendent "that we appeal your decision and submit our file to Mr. A. G.

Wise, Executive Vice President, Order of Railway Conductors of America, to progress our appeal through the regular channels." No further steps were taken to progress the claim on the property until more than 22 months had elapsed. On July 26, 1955, the General Chairman wrote Carrier's Assistant to Vice President requesting favorable consideration be given the claim on the basis of our Award 6990 dated May 26, 1955, which he asserted is decisive. The Carrier declined to consider the appeal on the ground that it was not timely presented as required by Rule 41 of the applicable Agreement.

Rule 41 sets forth the procedure to be followed in progressing claims. Except for appeal to the Assistant to Vice President, each step is required to be taken within a designated number of days. Thus, if claim in writing is not made to the Superintendent within sixty days of the event, it is barred. Claim for short payment must be made within sixty days of notice of disallowance. The Carrier may not deduct for any overpayment after sixty days. Compensation for a continued violation of the Agreement may not be exacted for a period of more than sixty days preceding the claim date. Hearing on a claim of rule violation shall be arranged within twenty days from date of claim. Superintendent's decision shall be made within thirty days of completion of hearing, or within thirty days of date of claim if no hearing is desired. If Superintendent's decision is not made within required time, the claim shall be paid. Notice of appeal must be given Superintendent within thirty days of his decision or further appeal is barred. Decision of highest designated officer of Carrier shall be rendered within 30 days after conference on appeal is completed. Decision of Carrier's highest designated officer is final and binding unless he is notified of non-acceptance within sixty days. Claim is barred unless within one year from date of decision of Carrier's highest designated officer, the claim is disposed of on the property or proceedings for final disposition are instituted.

In progressing a claim on the property, therefore, the only step for which a stated number of days is not expressed, is, with respect to prosecuting an appeal from the Superintendent's decision. The pertinent part of Rule 41 relating thereto is as follows:

> "* * * Notice of appeal shall be given to the Superintendent within 30 days of his decision or further appeal shall be barred.
>
> "A conference timely requested on appeal with the Assistant to Vice-President in Chicago, or with such other operating officer as may be designated from time to time by the Vice-President, Operating Department, shall be held without unnecessary delay and decision rendered within 30 days after conference is completed."

It is undisputed that the Superintendent was given notice of appeal within thirty days of his decision and that a conference with the Assistant to Vice President respecting such appeal was not requested until more than twenty two months thereafter. The question is: was a timely request made for a conference on appeal from the Superintendent's decision within the meaning of Rule 41? We think the delay of twenty-two months in perfecting this appeal was not consistent with the purpose or intent of a procedural rule which, in respect of every other step save one, has expressly fixed a maximum time limit of sixty days for action if a claim is not to be barred. In our opinion the intention of the contracting parties as indicated by the specific time limits imposed would be frustrated by a construction which would sanction a delay of more than eleven times the maximum of sixty days specified for action on the property. Apparently the parties to the Agreement recognized that some reasonable time should be afforded for arranging a conference on appeal with the Carrier's highest designated officer and therefore, with regard to the convenience of the conferees at that level, provisions for timely request for conference on appeal was made in lieu of a specified number of days. In determining the timeliness of the request for conference on appeal, however, substantial weight must be given to the broad purposes of the Rule as indicated in the time limits otherwise expressed. It will be noted in this connection that while the Rule provides for a conference "timely requested" on appeal, it

also provides that such conference shall be held without unnecessary delay and decision rendered within 30 days after conference is completed.

While we recognize and appreciate the consideration involved in claimant's decision to withhold prosecuting this appeal until Award 6990 was issued, we feel constrained to say that unilateral action in suspending further handling of a claim, however meritorious the reason may be, is not permissible under the Rule as written.

We have reviewed the Awards cited on behalf of Petitioner which are claimed to support its contention that a delay in carrying a claim to conclusion which does not prejudice the Carrier's rights is not a proper basis for denying or dismissing it. There were no time limits designated for progressing claims in Awards 7080, 7001, 7003, 6921, 6351, 5996, 4461 and 4454 and on that ground alone they are distinguishable from the Agreement before us.

On the basis of the facts and circumstances disclosed by this record, this claim was not progressed on the property within the reasonable time contemplated by Rule 41 of the Agreement and consideration of it here is therefore barred.

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 for reasons stated this claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February, 1957.