Award No. 8100
Docket No. TE7377

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the New York, New Haven and Hartford Railroad that:

(1) Article 26 of the effective agreement between the parties provides that the Carrier will give its decisions on claims within thirty days from the date the claims were received; and that on appeals the decision will be given within sixty days from the date such appeals are made.

(2) The Carrier violated said agreement when and because it failed to give its decisions on the claims listed in the Employes' Statement of Facts (which list is known to the Carrier), within the time limit specified by said Agreement.

(3) In consequence of these violations the Carrier shall be required to meet all such claims in full.

EMPLOYES' STATEMENT OF FACTS: The facts involved here are simple, and cannot consistently be controverted. The Carrier failed to comply with the time limit provisions of the Agreement with respect to rendering decisions on claims filed, and appealed to its officers. The dispute arises out of the Carrier's refusal to recognize its obligation under such rules, and to meet the claims on which such default has been established.

An Agreement bearing effective date of September 1, 1949, as to rates of pay and working conditions is in effect between the parties to this dispute. This Agreement, copies of which are assumed to be on file with your Board, is hereinafter referred to as the Agreement. Although the whole Agreement is, by reference, made a part of this submission, the Employes wish to call particular attention to Article 26, in support of the claims herein set forth.

Article 26, titled, "TIME CLAIMS—APPEAL LIMITS", reads:

"(a) Claims for money payments alleged to be due, arising from the application of rules of this agreement, may be made by the employe or his representative and must be presented in writing to the employe's immediate superior officer within ninety days from the date of the occurrence which provides the basis for the claim,

"Awards 12116 and 13582 of this Division clearly set out the principle we should follow."

Again, in negotiating the national rule governing time limits on claims and appeals (Article V of the August 21, 1954, agreement with non-operating crafts), the conference committee representing employes required specific provision in the final draft covering automatic payment of claims if not decided within the time prescribed.

Article 26 in its present form and under the same number has been in force from the agreement effective June 15, 1947. It was carried over without change in the current agreement effective September 1, 1949. The occasions have been numerous in cases submitted to the final appeal officer that for a variety of reasons decisions have not been given within sixty days of the date of appeal. Until this case, denial decisions on the merits in such dockets have not been further appealed. Coupled with the history of the rule itself, such want of action is significant that the contention made by Employes in this instance is untenable.

Carrier submits the claim should be denied.

All of the facts and arguments used in this case have been affirmatively presented to Employes' representatives.

OPINION OF BOARD: This case involves the interpretation of Article 26—Time Claims-Appeal Limits, of the agreement between the parties effective September 1, 1949, which reads as follows:

"(a) Claims for money payments alleged to be due, arising from the application of rules of this agreement, may be made by the employe or his representative and must be presented in writing to the employe's immediate superior officer within ninety days from the date of the occurrence which provides the basis for the claim, except that time off duty on account of sickness, leave of absence, disability or furlough shall extend the time limit specified by the period of such time off duty.

"(b) When claim has been presented initially in accordance with paragraph (a) of this article, the employe or the representative filing the claim will be notified, in writing, of the decision of the Company within thirty days from the date claim was received by the Company officer to whom addressed.

"(c) If an appeal is taken it must be filed with the next higher officer and a copy furnished the officer whose decision is appealed within sixty days after date of decision. A decision on such appeal shall be given within sixty days from date of appeal.

"(d) When appealed claims are allowed the employe and/or his representative will be advised the amount paid and the payroll on which it is to be carried."

It is alleged that some 16 claims, filed by the Petitioner between March, 1952 and October, 1953, after having been declined initially by the immediate supervisor involved, were properly appealed to Carrier's highest officer, and that in none of these cases was a decision rendered by that officer within the 60 days provided in sub-paragraph (c) of the rule. Therefore, it is claimed, under the rule all of the claims are required to be allowed as presented. The merits of the various claims are not put in issue; the only question before us is whether the failure of the Carrier to render decisions on the appeals within the time stated in the rule had the effect of precluding any further consideration on the merits of the individual claims and of allowing such claims in full.

It appears from the record that the earliest appeal from the decision of the local officer in the group of claims involved was made on May 2, 1952

and the most recent such appeal was made on January 13, 1954. At the time of the submission herein, decisions had been rendered on all but one of these appeals; these decisions were handed down over a period between March 23, 1954 and August 11, 1954. The lapse of time between the date of appeal and the date of decision ranged from approximately 25 months in the longest to sixty-eight days in the shortest case.

Petitioner's earliest contention that these claims should be allowed on the basis of the time limit in Rule 26 was contained in a letter to Carrier dated March 16, 1954. At that time the decision on one claim was more than 18 months overdue, one was more than 7 months overdue, three others were more than 5 months overdue, four were more than 3 months overdue, two others 2 months, three others 1 month, and one just 3 days overdue.

It is immediately apparent upon reading the rule that there is no specific provision as to what the effect of failure to conform to the prescribed time limits shall be. It is not entirely clear from the language of the rule whether compliance with all of the time periods specified is mandatory, since the parties used three different words in describing the duty or obligation to file claims, render decisions and appeal therefrom. Thus, in 26 (a), claims **"must"** be presented in writing within 90 days from the date of the occurrence which is the subject of the claim. 26 (b) provides merely that when the claim has been presented in accordance with paragraph (a), the employe **"will"** be notified in writing of the decision of the Company within 30 days. 26 (c) provides that if an appeal is taken from this first decision, it **"must"** be filed within 60 days, and that a decision on such appeal **"shall"** be given within 60 days from the date of the appeal. On the assumption that the parties chose their language with care and intended each word to have specific meaning, it would appear that they intended something different as to the time limits for filing claims and appeals, by the use of the word "must", from what they intended as to the time limits for rendering decisions, in which connection they used the words "will" and "shall". Further, it would appear from the use of the latter two different words, that they intended to differentiate between the degree of obligation imposed upon Carrier to render promptly the initial decision and the decision on appeal. Assuming nevertheless that the use of the word "shall" in the third person indicated that it was to be mandatory upon the Carrier to render its decision on appeal within 60 days, this still does not resolve the question of what result was intended if the decision was not rendered within that time limit.

Petitioner points to the fact that Carrier has in the past interpreted 26 (a) and 26 (c) to mean that if a claim is not filed within the stated time or if an appeal from the first decision is not filed within the stated time, the claim is completely barred; and that Petitioner has concurred in this interpretation. This being so, argues Petitioner, it is only reasonable to assume that if the parties intended the employes to lose their claims if they are not filed or appealed within the specified time, they must have intended also that the Carrier lose the right to oppose the claim if its decisions are not rendered within the specified time periods. Otherwise, it is contended, there would be no mutuality in the rule and employes would receive no benefits from the prescribed time limits.

Carrier, on the other hand, draws analogy to statutes of limitation which provide that causes of action or claims must be filed within a stated time or be forever barred, without concomitant penalties if decisions are not rendered promptly. Carrier also contends that since the rule does not specifically state that claims must be allowed when decisions are not rendered within the specified time limits, such a provision may not be written into the rule by this Board. As evidence that the parties never intended that claims be allowed when decisions on appeal were not timely rendered, Carrier points out that from the time Article 26 became effective on June 15, 1947 until the present dispute, 137 disputes had been appealed to the Carrier's highest officer. In 80 such disputes, the decision was not rendered within 60 days, the time limit provision of Rule 26 was not raised by the employes and 12 of those disputes came to this Division on their merits without the question of

time limits being raised. Carrier also points out that the present Rule 26 arose from a request served by employes on August 29, 1945 for revision of the then effective rule. The rule proposed by the employes included specific language to the effect that if the decision on appeal was not rendered within the specified time, the claim would be allowed. This language was not included in Rule 26 as it appears in the agreement. The record also shows that since the time the present claim was filed, a national agreement has been negotiated with respect to time limits for presenting and progressing claims, which does specifically provide that if decisions are not rendered on appeal within the time specified, the claim or grievance shall be allowed as presented. In view of this past practice and history of negotiations concerning the time limit rule, Carrier argues that it was not intended in the present rule that the claim should be allowed as presented if the decision on appeal was not rendered within the time limits. Carrier suggests that the most that was intended to result from such delay was that the Claimant would be entitled to proceed to the next higher step in the appeal procedure immediately upon the expiration of the 60 day period, without waiting for decision to be rendered.

On all the facts and circumstances of this case, we do not feel that the claim can be sustained. The general intention of the time limit rule is to bring about the prompt disposal of claims on their merits. The prescription of a period in which the Carrier is required to hand down its decision on appeal is intended to insure that Carrier cannot prevent an employe from obtaining a final decision on the merits of his case promptly, by the device of withholding its decision for a long period of time. It cannot be concluded, however, without a specific statement to that effect, that the intent of the rule was to bring about prompt decisions by Carrier through the device of allowing claims as presented if Carrier did not comply with the time limit. It is equally reasonable to conclude that the purpose of the time limit was to allow Claimants to appeal directly to this Board at the conclusion of the 60 day period, which would place them in the same position as if Carrier had denied their claims in time. In this case no attempt was made to follow this procedure; in fact, in the majority of the claims involved here, complaints were not made on behalf of Claimants at or near the time that the time limit expired. In the absence of a specific statement in the rule that the failure to render decision on appeal within 60 days shall result in the allowance of claims without regard to their merits, we cannot find on the evidence in this record that such was the intention of the rule.

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. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 11th day of October, 1957.