Award No. 10347

Docket No. CL-12130

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

D. E. LaBelle, Referee

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 violated the Clerks' Rules Agreement, effective May 1, 1942, except as amended, particularly Rules 2-A-3 (c), 3-C-1, 3-G-1, 6-A-1 (a), 7-A-1 (a) and 7-A-2, when it refused to permit Taft R. Davis, Trucker, to displace a Trucker's position at the Freight Station, Columbus, Ohio, Buckeye Region on December 5, 1957, and submitted him to a trial held on December 31, 1957, which resulted in his dismissal from the service of the Carrier effective Februery 6, 1958.

(b) Taft R. Davis be returned to service with all rights unimpaired and compensated for all monetary loss sustained dating from December 5, 1957, until adjusted.

OPINION OF BOARD: There is no use writing an opinion on the merits of this case. The claim has been filed out of time and is not properly before the Board.

This claim was denied on February 27, 1958, by the Manager, Labor Relations of the Carrier, the highest officer designated to handle such disputes on the property. The appeal to this Board was not made, until April 21, 1960.

A conference was requested by the Organization and one was held on April 15, 1959: there has been no showing concerning said conference. The record shows that on June 8, 1959, the General Chairman of the Brotherhood addressed a letter to the Manager—Labor Relations reading as follows:

> "Please refer to the following docket which was last discussed at our meeting on April 15, 1959:
>
> DOCKET 440 — BUCKEYE REGION ——CASE NO. 247
>
> "We have not yet received your decision following this meeting. May we now have your decision?"

The record next shows that the following letter dated June 29, 1959, was addressed to General Chairman of the Brotherhood by Manager—Labor Relations reading as follows:

". . . . The following subject was re-listed by you and discussed at meeting held in this office on April 15, 1959:

DOCKET NUMBER 440 — BUCKEYE REGION CASE NO. 247

"You advised that the Claimant was again examined by our Medical Department on March 13, 1959. In this connection, we have been unable to find any record of a medical examination of Taft R. Davis subsequent to his dismissal in December, 1957.

"We would appreciate advice from you as to the name of the doctor making this alleged examination and the location . . . ."

The record shows no response to this letter, but does show there was a further conference between the Manager—Labor Relations and the Chairman of the Organization, held July 15, 1959. Again, there is no showing concerning said conference or what was discussed thereat.

The record shows the following correspondence: letter dated January 15, 1960, from the General Chairman to Manager—Labor Relations, reading as follows:

"We have written you under date of October 12 and December 11, 1959 with respect to the following docket which was discussed at our meeting on July 15, 1959:

DOCKET 440 — BUCKEYE REGION — Case No. 247

"We have not yet received your decision following this meeting. May we now have your decision?"

This letter was answered by Manager—Labor Relations on February 26, 1960, in a letter reading as follows:

". . . . This refers to your letter of January 15, 1960, and previous correspondence concerning the following subject:

"The facts and circumstances of this claim are related in our letter of February 25, 1959 and the Joint Submission.

"We have again reviewed this case and after further consideration, can see no reason for changing the decision given you in our letter of February 25, 1959. . . ."

The particular rule involved here, is 7-B-1 (i):

"7-B-1. (1) (Effective November 1, 1955) All claims or grievances involved in a decision by the Manager of Labor Relations shall be barred unless within one year from the date of said officer's decision proceedings are instituted by the General Chairman before the Third Division of the National Railroad Adjustment Board."

It is, of course, true that the parties by agreement may extend the one year period set in said Rule but in this case, the Organization does not claim any

agreement to extend, but advances the claim that the Carrier waived its right to insist upon strict performance under said rule, by reason of the conferences and correspondence between the parties, all of the facts set forth in the Record, relative thereto being contained in this Opinion.

Under the Railway Labor Act, there is some uncertainty as to the proper and necessary use of conferences in settling disputes which arise out of the operations of the railroad of the particular Carrier, under the terms of the agreement between the Carrier and the employes.

Section (2) (Sixth) of the Railway Labor Act, is specific in setting up a fixed procedure that must be followed when a request is made for a conference on any dispute. Section (2) (Second) of the same act is such that in a general way, it may be said to declare that disputes shall be considered and, if possible, decided in conference between the representatives of each. Nothing is said about conferences at each level of consideration on the property. But, at any level, a conference must be granted if proper request is made. (Award 15618, First Division)

Waiver is defined as "the intentional relinquishment of a known right with the knowledge of its existence and an intention to relinquish it. In practice, it is required of everyone to take advantage of his rights at a proper time; and neglecting to do so will be considered as a Waiver. (Bouvier's Law Dictionary)

It has been held in the First and Fourth Divisions that requests for and holding conferences regarding reinstatement on dismissal claims do not constitute waiver or agreement to extend the limitation periods for appeal. (Award 17301, 19965 First Division): (Award 976, Fourth Division.) We are unable to spell out any waiver on the part of the Carrier.

While it has been said that a statute of limitations is an unconscionable defense and its application in extinguishing a possible substantial right unduly harsh, it is true that the negotiation of such a rule stemmed from sound and desirable bases. It requires processing of claims in an orderly and prompt fashion in the interest of both carrier and employe. Either party is within its contractual right in urging it as a defense.

After carefully considering the matter, and without giving any consideration to the merits of the claim of Claimant, we deem it necessary to hold that this claim be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February, 1962.