Award No. 12233
Docket No. CL-12078

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

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

(1) That Carrier violated the Clerks' current Agreement, beginning January 1, 1959, when it failed to assign or fill the Clerk-Steno position, Dallas, Texas, bulletined in General Traffic Manager, Mr. G. W. Heuermann's Advertisement Bulletin No. 31 of December 31, 1958.

(2) That Mr. Sidney T. McKenzie be compensated for a day's pay each day, Monday through Friday of each week, at the monthly rate of $395.57, beginning with January 1, 1959, and continuing until the violation is corrected.

EMPLOYES' STATEMENT OF FACTS: Under date of November 26, 1957, former General Traffic Manager, Mr. W. G. Degelow, issued his Advertisement Bulletin No. 34, bulletining the position of Clerk-Steno, Dallas, Texas, for bids in accordance with the provisions of the agreement, and particularly Rule 10. The position is a Rule 1, Exception C, position and is subject to all rules of the agreement except Rule 4 — Promotion, Assignments and Displacements. On January 7, 1958, Mr. Degelow issued an assignment notice in which he stated that Mr. S. T. McKenzie was assigned to the position covered by his Advertisement No. 34. Mr. McKenzie occupied and worked the position until close of business December 31, 1958, at which time he was relieved of the position and assumed the status of an unassigned employe.

Also, on December 31, 1958, General Traffic Manager, Mr. G. W. Heuermann, issued his Advertisement Bulletin No. 31, again advertising the Clerk-Steno position, Dallas, Texas, and the bulletin contains the following:

"Time limit of this Bulletin will be subject to provisions of Note under Rule 10 of the current Clerks' Agreement."

The position of Clerk-Steno, Dallas, Texas, as advertised in General Traffic Manager's Bulletin No. 31 of December 31, 1958, remained vacant until

IV.

Without prejudice to its position that the claim clearly is without merit under the rules and should be denied, Carrier submits there is no basis for the Employes' contention that the claim should be allowed under the time limit provisions of Article V of the August 21, 1954 Agreement.

While Section (a) of the time limit rule involved provides that if whoever filed the claim is not notified of reasons for disallowance within the 60 day period specified "the claim of grievance shall be allowed as presented", this necessarily means a proper claim and could not validate claims which on their face have no basis. The instant claim was filed in behalf of a person who had no seniority and held no right to any work under the agreement.

Such a claim could not be validated by the time limit for disallowance, just as any manifestly improper claim could not be so validated. For instance, a clerical employe writing his supervisor and stating that he had filed a claim more than 60 days prior thereto that the Carrier should replace brakemen on trains with clerks, and that he had received no denial of the claim, would have no valid claim on the basis of the time limit provisions of the rule, even if he proved that he had filed such a claim and that no decision had been rendered. It would not be a proper claim. It would not be a claim that he was involved in an alleged violation of any agreement covering rates of pay, rules or working conditions, which gave him rights to such work.

The same would be true of a claim that the Carrier should require the Government to reduce taxes, stop highway construction, or some similar fantastic claim. He could not establish rights by making a claim. The Railway Labor Act provides for making agreements covering rates of pay, rules and working conditions by negotiation. Manifestly the time limit rules do not circumvent the Act. The time limit rules cover properly filed claims, and as indicated could not reasonably require pay for purported damages simply on the basis that some claim was filed and allegedly not denied within a period of 60 days.

The Carrier respectfully submits that the claim in favor of a person who held no seniority or right to any work under the agreement was not a proper claim under the time limit rules, and that no payment could be due on the basis of such a claim.

V.

In conclusion the Carrier repeats that the claim clearly is not supported by the rules and should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: On December 30, 1957, Mr. S. T. McKenzie was assigned to the position of Clerk-Steno at Dallas, Texas, an Exception C position under the Agreement. This employe was removed from the position on December 30, 1958. The position was advertised on December 31, 1958, but remained vacant until April 6, 1959, when Carrier employed Mr. J. A. Snow to fill the position. A claim was filed in behalf of Mr. McKenzie that Carrier violated the Agreement when it failed to restore him to the position of Clerk-Steno in preference to engaging an employe without seniority. Request is made for compensation for each workday beginning with January 1, 1959, and continuing until the violation is corrected.

Organization maintains that Carrier is precluded from arguing the case on its merits because it failed to comply with the provisions of Article V, Section 1 (a) of the National Agreement of August 21, 1954, which requires that a claim must be disallowed by Carrier within 60 days from the date filed.

The record shows that the General Chairman initiated the claim in a letter to Carrier dated February 17, 1959. Although subsequent letters were sent to Carrier, that party did not respond until it sent its denial letter of August 24 ,1959. The time that elapsed between the presentation of the claim and this letter was beyond the 60 day limit provision of Article V.

Carrier admits that the claim was not disallowed within 60 days after it was presented, but it maintains that it was not obligated to answer an unfounded claim. Carrier had an opportunity to avail itself of the privilege of proving that the claim did not have merit if it had acted within the 60 day prescribed period. Since it failed to do so, the claim must be allowed. Our position is consistent with that of Award No. 10138.

However, in examining the request for compensation in Item 2 of the claim, we fail to find merit in the contention that Petitioner is entitled to payment for each day from January 1, 1959 until the violation is corrected. Since Petitioner occupied an Exception C position, Carrier had the right to remove him. Moreover, Claimant did not make application for the position. We hold, therefore, that Claimant is entitled to compensation beginning January 1, 1959 to the date the position was filled on April 6, 1959.

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 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 of the parties was violated.

AWARD

Claim sustained in accordance with the Opinion of the Board.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of February 1964.