

Award No. 12713
Docket No. TE-10736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Francis M. Reagan, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE PITTSBURGH & WEST VIRGINIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Pittsburgh & West Virginia Railway, that:

1. On May 1, 1957, T. A. Neelan, authorized representative of The Order of Railroad Telegraphers, filed at the time and in the manner required by collective bargaining agreements claim with W. C. Kresge, General Superintendent, duly authorized carrier officer to receive such claim as follows:

(1) The Carrier violated the agreement between the parties when it changed the assigned rest days, thereby changing the assigned work days of J. F. Polen, M. J. Verno, J. P. Verno, B. J. Liptak, J. F. Marnik, and M. J. Verno on March 8, 1957 and J. F. Polen, E. R. Williams and B. F. Liptak, on March 11, 1957, and

(2) The Carrier shall restore the named employes to the same work week including the assigned rest days as existed prior to the changes made on March 8 and March 11, 1957, respectively, and

(3) Each employe named shall be compensated by the Carrier for days suspended on work days of the previous assignment for eight hours at the straight time rate and for rest days of the previous assignment worked under the new assignment for eight hours each such days at the time and one-half rate, such compensation here claimed until the previous assignments are restored.

2. On June 27, 1957, Mr. Kresge declined (File 77-4-F) claim and his decision was rejected by Mr. Neelan on June 29, 1957. Thereupon appeal was taken, on June 29, 1957, in writing, to Charles H. Manoogian, Manager Labor Relations, carrier officer duly authorized to receive such appeal. Mr. Manoogian failed to render decision, in writing, until September 13, 1957.

OPINION OF BOARD: The Board is asked to charge the Carrier with failure to allow a claim, said claim having been filed May 1, 1957, declined June 27, 1957, appealed June 29, 1957 and disallowed September 13, 1957, the seventy-sixth day thereafter, said course of conduct being alleged to be in violation of Article V, Section 1(a) of agreement of August 21, 1954.

The claim arose out of a re-arrangement of rest days for one J. F. Polen. This change to accommodate him resulted in the rest days of five other Claimants being changed.

Allegation is made by the Carrier that service requirements necessitated the rest day change, and cites a letter dated June 27, 1957, from Monessen Southwestern Railway Co., expressing appreciation for the change. This letter is subsequent to the filing of the claim May 1, 1957, and is not deemed "on the property."

The Board feels the change of rest days was brought about by the badgering of 30 year employe J. D. Polen. No property right, unfortunately, is given in the area of rest days on the principle of seniority.

Conversely, it is well settled rights established by a collective agreement cannot be bartered away by an individual beneficiary covered by it. The Order of Railway Telegraphers vs. Railway Express Agency, U.S. Supreme Court, February 23, 1944.

Carrier has called the Board's attention to the fact that Section 3 of Article V may be applicable here upon the premise that this is an alleged continuing violation. Section 3 does not apply here, for it speaks to the time of filing of a claim, not disallowance of an appeal.

A review of the record leads the Board to find there has been a time violation here. The facts disclose an unfortunate administrative oversight in time.

Reargument of this award was had on Thursday, February 13, 1964, directed to the question as what was meant by "Claim Allowed" as contained in the previous release of this award.

The agreement was found to be violated in the original award because the Carrier was guilty of violation of Section 1A of Article V of the agreement of August 21, 1954 in that it gave Notice of Disallowance of the basic claim on the seventy-sixth day.

Carrier's representative directed the Board's attention to the fact that strict construction of the phrase "Claim Allowed" would result in an accrued claim in excess of \$92,000 at this time for compensation as the result of change of rest days.

Organization's representative urged maintenance of this maximum amount of compensation, pointing out that this Board is concerned only with the proposition as to whether a rule has been violated or not, not with the compensation amount consequences.

There was no showing of a loss to any of the Claimants as a result of their change of rest days. It is noted further that J. D. Polen, whose demands for change of rest days precipitated this situation, is also a Claimant here and a beneficiary of this award. Compensation is defined in Webster's New Colle-

giate Dictionary as: "2. That which compensates for loss or privation; recompense." The amount of maximum compensation urged here in unreasonable.

Therefore:

The previous release of this award is confirmed and the assessment of compensation to Claimants shall be as follows:

Carrier has urged that if an agreement violation be found that compensation may be assessed only for March 8, 1957, and March 11, 1957, the two dates mentioned in paragraph (1) of the Statement of Claim.

This is too narrow a view and is not realistic, for it is clear Claimants are asking for more than two days' redress. It is patent in paragraph (3) of the claim what they are asking for: "Each employe shall be compensated by the carrier for days suspended on work days of the previous assignment . . . such compensation here claimed until the previous assignments are restored."

Therefore, the following formula for allowance of compensation is made:

The Carrier disallowed this Claim on September 13, 1957, the seventysixth day after June 29, 1957, when Notice of Appeal was given.

Accordingly, the Carrier will compensate the Claimants in accordance with the formula detailed in paragraph (3) of the claim, said right to compensation to cover the period June 29, 1957, when Notice of Appeal was given by the Organization and terminate on September 13, 1957, Date of Disallowance by the Carrier.

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 Agreement has been violated.

AWARD

Claim is allowed as to Paragraphs (1) and (3), but denied as to Paragraph (2). Compensation to be computed in accordance with the formula detailed in Paragraph (3) of the claim, said right to compensation to begin with June 29, 1957, and terminate on September 13, 1957.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of July 1964.

**CARRIER MEMBERS' DISSENT TO AWARD 12713,
DOCKET TE-10736
(Referee Reagan)**

It was found that a time limit violation existed here because of "an unfortunate administrative oversight in time", and it was then held that "The amount of maximum compensation urged here is unreasonable." We concur with this last statement. However, we wish to point out that under authority of Award 3777 (Stone), the amount of compensation should have been restricted to the specified dates. See Awards 12473 and 12474.

For the reasons set out above, we specifically concur and dissent for the reasons shown.

**W. F. Euker
R. E. Black
R. A. DeRossett
G. L. Naylor
W. M. Roberts**