

Award No. 14374
Docket No. CL-15294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5667) that:

(a) The Carrier violated Article V, Section 1 (a) of the Agreement signed at Chicago, Illinois, August 21, 1954, by not making written reply within the required time limits to the grievance and claim filed with Mr. L. B. Coursey, Superintendent of Terminals, Atlanta, Georgia, on October 26, 1963.

(b) The Carrier shall be required to establish sufficient clerical positions to produce the desired amount of clerical work, to the end that supervisory employees will no longer be allowed, permitted or required to perform clerical duties at Inman Yards, Atlanta, Georgia.

(c) The constant threat of being dismissed for minor errors be lifted from the employees at Inman Yards, Atlanta, Georgia.

(d) Messrs. E. E. Morrison, E. M. Turner and J. B. Andrews be restored to the service of the Company with all rights unimpaired and be compensated one day's pay effective December 26, 1963, and each day thereafter, five days a week, until they are restored to service.

EMPLOYEES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees as the representative of the class or craft of employees in which the claimants in this case either hold or held positions and the Southern Railway Company.

Due to what we considered to be a deterioration of the conditions under which the clerical employees of the Southern Railway Company were required to work at Inman Yards, Atlanta, Georgia; due to what we considered to be the ruthless, unjust and unreasonable attitude of the Carrier toward its em-

Article V of the so-called Chicago Agreement of August 21, 1954, provides, in part, the following:

"ARTICLE V.

CARRIER'S PROPOSAL No. 7

Establish a rule or amend existing rules so as to provide time limits for presenting and progressing claims or grievances.

This proposal is disposed of by adoption of the following:

The following rule shall become effective January 1, 1955:

1. All claims or grievances arising on or after January 1, 1955 shall be handled as follows:

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

* * * * *

6. This rule shall not apply to requests for leniency."

OPINION OF BOARD: This claim is the first of a series of four brought by the Organization against the Carrier alleging certain violations of the Agreement. This claim is related to the latter three claims in that Paragraph (d) asks for reinstatement and compensation of three Claimants, each of whom is a Claimant in the subsequent three disputes.

The basis for the instant claim is an alleged violation of Article V 1(a) of the Agreement dated August 21, 1954, which prescribes procedures for the handling of claims and grievances. It is stated as follows:

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances."

The Organization contends that a formal and proper grievance was filed on October 26, 1963 by letter of that date addressed to Mr. L. B. Coursey, Carrier's Superintendent of Terminals from Mr. W. H. Flynn, Organization's

Division Chairman; and since Carrier failed to answer or disallow the grievance as required by Article V 1(a) within the 60 day period, the grievance must be allowed as presented.

The Carrier contends that the grievance filed was a general or blanket complaint and therefore not a proper or bona fide claim within the meaning of Article V; and that the demand relative to the three discharged clerks was a request that they be restored to service on a leniency basis because no monetary claim was included, and further because three separate claims on their behalf had been filed for reinstatement and pay for time lost.

As a preliminary matter, we reject the claims of the Organization as set forth in Paragraphs (b) and (c) of the claim. It is unnecessary to reiterate a variety of reasons—substantive and procedural—why these claims cannot be considered by this Board.

We turn to the question of the claim set forth in Paragraph (d) relative to the reinstatement and compensation of back pay of three discharged clerks.

As it related to the three clerks in question, the grievance filed by the Organization on October 26, 1963 requested: "that Mr. E. E. Morrison, Mr. E. M. Turner, and Mr. J. R. Andrews be restored to the service of the company with all rights unimpaired, advising."

Subsequent to the date of this letter and prior to the expiration of the 60 day period, three separate claims were filed on behalf of the above named clerks for restoration to service and for compensation for time lost.

Because of the insufficiency of the grievance (failure to demand compensation for time lost) and the subsequent filing of individual claims, Carrier had the right to assume that the collective claims as set forth in Paragraph (d) of this dispute had been abandoned by the Organization and there was no need for Carrier to answer the grievance. To hold otherwise would warrant a finding that Carrier had been misled by the filing of the individual claims, and the Board would necessarily have arrived at the same result.

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 the Claims shall be dismissed.

AWARD

The Claims are dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 29th day of April 1966.

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