

Award No. 14502
Docket No. CL-12736

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

KENTUCKY & INDIANA TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the Terminal Committee of the Brotherhood (GL-4977) that:

(1) The Carrier violated the provisions of Rule 32 of the Agreement when it failed to render a decision on an appeal to the Director of Personnel within the specified time limits; and

(2) That the Carrier now be required to assign Arthur S. Maley to the position of Miscellaneous Clerk advertised by Bulletin 9, dated May 2, 1960 and compensate him for all salary loss sustained as a result of Carrier's refusal to assign him to said vacancy, retroactive to May 16, 1960 and for each work day thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: May 2, 1960 bulletin was posted in the office of Secretary and Auditor advertising Position 9, titled Miscellaneous Clerk. Instead of awarding the vacancy to the senior applicant, Arthur S. Maley, an employee with 19 years seniority, Carrier assigned junior employee W. P. Fahey, Jr. an employee with less than five years seniority.

May 17, 1960 General Chairman, J. W. Turley, filed claim in behalf of Mr. Maley with Secretary and Auditor, H. R. Wade, (Employee Exhibit A) who declined claim under date of May 18, 1960 (Employee Exhibit B). In denying claim, Mr. Wade advised the Organization:

"* * * to take this exception to Mr. T. L. Dixon, Director of Personnel, who will arrange for a meeting with your Committee."

The claim was appealed to Mr. Dixon, the highest officer of the Carrier designated for that purpose, on July 7, 1960 (Employee Exhibit C). It was not until September 9, 1960 that Director of Personnel, Dixon, declined the claim (Employee Exhibit D). This was beyond the sixty day period in which Carrier, under the provision of Rule 32, has in which to disallow a claim.

September 13, 1960 the General Chairman called the Carrier's attention to the fact it had not complied with the provisions of Rule 32 and requested that the claim be allowed (Employees Exhibit E), and on November 16, 1960 he again requested that the claim, "be allowed without regards to its merits" (Employees Exhibit G).

We attach hereto and make part hereof records identified as Exhibits A to G inclusive.

(Exhibits not reproduced.)

CARRIER'S STATEMENT OF FACTS: Carrier asserts that the Agreement of May 1, 1957, was in effect on the date the instant claim arose.

Ten applications for a Miscellaneous Clerk vacancy in the Accounting Department were submitted by K & I employees. All ten applicants were given identical tests and four qualified. Employee W. P. Fahey, Jr., being the senior qualified employee, Secretary and Auditor Wade awarded him the vacancy on May 16, 1960.

The Organization appealed the decision of Secretary and Auditor Wade on July 7, 1960, contending that claimant A. Maley should have been awarded the position. Conference was held on July 18, 1960, by Carrier's highest officer to whom appeals may be made. After listening to the arguments advanced by the Committee for placing claimant Maley on the job, Director of Personnel Dixon declined orally the Organization's request.

On Sept. 9, 1960, sixty-two days after the Organization's appeal letter, Carrier declined in writing, Carrier's Exhibit A, the claim that Mr. Arthur Maley should have been awarded the position, and declined the Organization's claim that he should be paid the difference in earnings between the job presently held and the rate of the Miscellaneous Clerk job awarded W. P. Fahey, Jr.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier admits that its highest designated officer failed to disallow the claim in writing, giving his reasons, within 60 days of his receipt of the notice of appeal. This, we find, violated paragraph 1 (a) and 1 (c) of Rule 32—Time Limits.

Rule 32 is a reproduction of Article V of the August 21, 1954 Agreement.

Clerks assert that the claim "shall be allowed as presented." It cites, *inter alia*, Award No. 10948 and NDC Decision 15.

Carrier, citing NDC Decision 16, argues that: (1) the claim is a continuing one; (2) the case is not before us on the merits—only on the time limitation violation; (3) the violation of the time limitation terminated when Clerks received a belated denial of the claim on September 9, 1960; and, (4) Claimant is entitled to be compensated only from the date of filing of the claim, May 17, 1960, to September 9, 1960.

NDC Decision 16 supports Carrier's position. We will, therefore, sustain the claim to the extent of (4) in the preceding paragraph.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained to the extent prescribed in the Opinion, *supra*.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
By Order of Third Division

Dated at Chicago, Illinois, this 8th day of June 1966.