# Award No. 15625
# Docket No. SG-15143

## NATIONAL RAILROAD ADJUSTMENT BOARD

## THIRD DIVISION

## (Supplemental)

**John J. McGovern, Referee**

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## PARTIES TO DISPUTE:

## BROTHERHOOD OF RAILROAD SIGNALMEN

## SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the Brotherhood of Railroad Signalmen on the Southern Railway Company et al:

> On behalf of Mr. W. R. Crowe, to be compensated at the Helper's rate of pay for all time lost between March 1 and May 20, 1963, or not less than regular time (eight hours each day — five days each week) in accordance with the provisions of the Agreement, while not permitted to return to work after his physical examination on February 25, 1963, until after May 20, 1963, when he was notified that he could return to work at his earliest convenience, causing him to lose approximately 90 days of work through no fault of his own.
>
> [Carrier's File: SG-19182]

EMPLOYES' STATEMENT OF FACTS: W. R. Crowe with a seniority date of 5-16-60 in the Signal Helper Class on the Eastern Lines entered a hospital because of illness in March, 1962. He underwent treatment and was released with his doctor's O.K. in April. He was not, however, permitted to return to work with reasonable promptness after an examination on February 25, 1963, by Carrier's physician, Dr. Moon at Asheville, North Carolina.

He was returned to work by Carrier following an exchange of correspondence between General Chairman E. C. Melton and Signal and Electrical Superintendent J. M. Stanfill. Mr. Melton's letter of May 18, 1963, is Brotherhood's Exhibit No. 1, and Mr. Stanfill's reply dated May 20, 1963, is Brotherhood's Exhibit No. 2.

On June 11, 1963, General Chairman Melton addressed another letter to the Signal and Electrical Superintendent (Brotherhood's Exhibit No. 3) in which he cited Carrier to unjustified delay in permitting Mr. Crowe to return to work. He stated that this delay had caused the Signal Helper through no fault of his to lose approximately 90 days of work. He charged that the examination which was made on February 25th did not disclose anything which would prevent the doctor from rendering a favorable report the same as Dr. Clayton did nearly three (3) months later. No further examinations were made; the decision of Dr. Clayton to allow Mr. Crowe to return to work was based solely on the results of the one examination.

tary claim. This is true because, as you know, the claim is barred by Article V of the Agreement of August 21, 1954, and we are not waiving the bar. Furthermore, any compromise settlement which may have been discussed was not made, and when not made, any offer even suggested was withdrawn. This you concede.

Without prejudice to the fact that the claim is barred, I reaffirm my advice that the claim is without any basis and there is no reason for my changing the decision previously given you in the matter.' '

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Claimant in this case had a history of physical disability for a substantial period of time prior to the filing of this action. Based on a physical examination given to the Claimant on February 25, 1963, the petitioning Organization files for all time lost between March 1, 1963 and May 20, 1963 by letter under date of June 11, 1963.

The Carrier defends on the basis that Article V of the Agreement of August 21, 1954, now part of the Signalmen's Agreement was violated: It provides that:

"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."

The evidence of record indicates that the date of the occurrence on which this claim was based, was February 25, 1963, and the date upon which it was submitted in writing to the Carrier was June 11, 1963. Obviously the sixty day period required by Article V of the Agreement of August 21, 1954 has been disregarded. We are left with no alternative other than to say that this claim is barred by Article V, and as a consequence this Board has no jurisdiction over it. We will dismiss the claim.

**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 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 no jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 16th day of June 1967.

## DISSENT TO AWARD NO. 15625, DOCKET SG-15143

The undersigned takes particular exception to the Majority's holding that this Board has no jurisdiction over the dispute between the parties, and my not here commenting on the interpretation and application of the controlling agreement is not to be construed as concurrence.

The jurisdiction of the Board is set out in Section 3, First (i) of the Railway Labor Act. In order to be eligible for presentation to this Board a dispute must be between an employe or group of employes and a carrier or carriers. The Majority plainly state in their **Findings** "That the Carrier and Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act."

The Act further provides that disputes must grow out of grievances or out of the interpretation or application of Agreements concerning rates of pay, rules, or working conditions. The instant dispute involved the interpretation and application of rules of the Agreement of August 21, 1954 between the parties.

The Act further provides that such disputes must be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes and fail to reach adjustment. The employes aver that the instant dispute was so handled and the carrier, though contending that this Board is without jurisdiction, does not categorically deny it.

Further evidence that the Majority actually recognized the Board's jurisdiction is found in the fact that they interpreted an Agreement between the parties; if we have no jurisdiction, their interpretation is a nullity.

The Majority has erred; therefore, I dissent.

W. W. Altus
For Labor Members
6/29/67

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