Award No. 15709
Docket No. CL-14881

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Claude S. Woody, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (Eastern Lines)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5524) that:

(a) Carrier violated rules of the Clerks' Agreement when it failed and refused to pay Mr. R. W. Allison holiday allowance for November 22 and December 25, 1962; and,

(b) Carrier shall now pay R. W. Allison eight (8) hours at the pro rata rate of $2.20 per hour for each day November 22 and December 25, 1962; and,

(c) In addition to the amounts claimed above, the Carrier shall pay an additional amount of six percent per annum, compounded annually on the anniversary of each day under claim.

EMPLOYES' STATEMENT OF FACTS: Claimant, R. W. Allison, with a seniority date of November 14, 1947, is an unassigned or extra employe at Arkansas City, Kansas and, as such, is used to provide relief for vacations and other vacancies, as well as to perform service as an extra or unassigned employe under Article VI, Section 5, of the current Clerks' Agreement. Commencing with the 30th calendar day immediately preceding November 22, 1962, up to and including December 24, 1962, he performed service for the Carrier as follows:

Stockyard Laborer	November 1, 2, 3, 5, 7, 8, 9, 11, 12 14, 15, 16, 17, 19, 20, 21
	December 1, 2, 3, 7, 8, 10, 12, 14, 16, 17, 19, 22, 23 and 24, 1962

He also performed service on November 30, 1962, following the Thanksgiving Day Holiday, and on December 29, 1962, following the Christmas holiday. The entire work record is not here produced as it is unavailable; however, the pertinent records set out here are correct.

to progress this Allison claim to the Third Division, to hold in abeyance the four additional claims identified by your files which I have cited above until we have an opportunity to confer following the issuance of the award that might be rendered in the Allison case, it being understood that by so handling there will be a suspension of the time limit rule for a period of sixty (60) days after such discussion. Further, I am willing to hold other similar claims, which I understand you have filed but which have not been brought to me on appeal, in abeyance at the General Manager's level, providing such other claims are in all respects identical to the Allison claim.

Yours truly,

/s/ O. M. Ramsey"

Following the above exchange of correspondence, the dispute was appealed to the Third Division, NRAB, and to the Disputes Committee by the Petitioner's Grand President, C. L. Dennis in two letters dated April 3, 1964, that were addressed to the Board's Executive Secretary, Mr. S. H. Schulty, and Mr. J. F. Griffin, Administrative Secretary, Labor Relations Department, National Railway Labor Conference.

OPINION OF BOARD: The facts involved are substantially identical to the facts considered in Awards 14364 and 14365 (Lynch). Those awards involved the identical parties, and are controlling to the effect that Items (a) and (b) of the instant claim will be sustained.

Item (c) of the instant claim seeks recovery of interest on the amount of the claim at the rate of 6% per annum from the dates of the holidays in question, compounded annually on the anniversary of each day under claim. This raises an issue of first impression between the parties.

The exclusive rule under which the instant claim arose (Article III of the existing agreement) provides as follows:

"Section 1. Subject to the qualifying requirements applicable to regularly assigned employes contained in Section 3 hereof, each regularly assigned hourly and daily rated employe shall receive **eight hours' pay at the pro rata hourly rate of the position to which assigned** for each of the following enumerated holidays. . . ." (Emphasis ours.)

There are cogent arguments which urge us to sustain the claim. Interest, on the current market, is obtainable by any person who possesses the principal sum. Thus, if an employe is denied his wages for a day, he loses not only the wages, but also the interest which such wages would earn.

However, we must not lose sight of the purpose for which this Board was established and the prescribed limits of its jurisdiction. Such jurisdiction is not coextensive with that of a court of law or equity, but confined to the interpretation and application of the collective bargaining agreement under which the claim is conceived. We cannot award claimant that which is not provided for by the express terms of the agreement. Interest pendente lite is not provided for in the Agreement betwen the parties in the instant case, and, therefore, must be denied.

Awards 2675 (Second Division), 6962 (Third Division), 8088 (Third Division), 12989 (First Division), 13098 (First Division), and 13099 (First Division) support, and under the doctrine of stare decisis, control our decision to deny Item (c) of the claim.

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 Carrier violated the Agreement.

AWARD

Item (a) is sustained.

Item (b) is sustained.

Item (c) is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

LABOR MEMBER'S DISSENT TO AWARD 15709, DOCKET CL-14881

There are many errors in Award 15709, Docket CL-14881, and none of them were corrected by merely deleting the language that "Our review of existing awards which have decided this issue between other parties reveals no instance where interest pendente lite has been granted" from the proposed award. Instead, that action represents an error of omission whereas the deleted language represented an error of law because the Referee was furnished with, and reviewed, Third Division Award 4665 (Connell) and the interpretations of Awards 9578 and 9579 (Johnson) as well as Award No. 3 of Special Board of Adjustment No. 259 (Bailer), all of which granted monetary damages in the form of interest on sums of money belonging to Claimants which the Carriers wrongfully held.

Another error occurred when the Referee wrote that the exclusive rule involved was Article III, Section 1. Article XIII, Section 14, providing that shortages in pay would be made within seven days after request therefor was made was clearly involved, and amply supported the claim for interest when the shortage in pay was not timely made on demand as promised. Perhaps one should call that error "necessary error", for the Awards relied on as authority, for the most part, were based on a conclusion that no rule supported the claims for interest.

There are other errors also, but the fundamental error, the error responsible for denying Claimant justice and resulting in an inadequate remedy, is the error the Referee committed in construing the Railway Labor Act and the authority (jurisdiction) of this Board as prohibiting him from awarding the just and reasonable compensatory damages prayed for. His conclusion with respect to the Board's jurisdiction is palpably in error. He exceeded his authority by placing such a narrow interpretation on Section 3 First (1) of the Railway Labor Act. He thus evaded his duty to fashion an appropriate remedy by concluding that, because of his limited authority under the RLA, he **could not award** the reasonable interest prayed for, even though he conceded that Claimant had suffered such damages.

The RLA Section 3 First (v) charged the Board with the responsibility to "adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section", which section provided that "disputes growing out of grievances **or** out of the interpretation or application of agreement * * *" will be "adjusted" by this Board. (Emphasis mine.) Most assuredly, for him to have allowed damages which were proven would not have been in conflict with either the RLA, the rules of this Division, or the case law of this Board which has denied any number of compensatory claims because **no damages were shown!** The Award is also contrary to Award 12838 (Hamilton).

If it was the intent of the Referee to say "I will not", that would correctly reflect only on the Referee; however, when he undertakes to write "We cannot", and succeeds in having such restriction of this Board's authority adopted by the majority, such action reflects badly on the majority.

The evidence and arguments in the case were, as set out in the Opinion, clear and convincing, and the theory of damages has not been abrogated or modified by the RLA or any other statute or rule. Thus neither the case law, the common law, or contract law, prohibited awarding Claimant the compensatory damages prayed for. The compensatory damages suffered by Claimant was a reparable injury, and this Board had original and exclusive jurisdiction to order requittal, but failed and refused to do so.

The Claimant in this case has wrongfully been denied just compensation for the damages he suffered, and I most vigorously dissent. While dissenting, it would seem quite appropos to include a "Caveat" for the facts are that Claimant simply had his just grievance denied by having it come before the wrong Referee who chose to permit Carrier to gain from violating the Agreement. Such actions do not promote the purposes of the Railway Labor Act but rather serves to subvert them.

D. E. Watkins
Labor Member
7-25-67

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