



Award No. 15798

Docket No. CL-15802

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Daniel House, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5790) that:

(a) The Carrier violated the Agreement when it unjustly and improperly disqualified Rate Clerk Val Foster from his Rate Clerk position when it disqualified him under the "Procedure For Determining Employees' Qualifications Mediation Agreement dated April 21, 1932." Mr. Foster at the time of his disqualification had better than twenty years of rate experience, all in the same department of the Southern Railway Company.

(b) Mr. Foster shall be compensated at the rate of \$22.75 each day, plus appropriate increases, beginning January 28, 1964, and continuing five days each week, until he is restored to his Rate Clerk position.

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 claimant in this case held position and the Southern Railway Company.

Mr. Val Foster is carried on the Southern Railway System, Atlanta Accounting Rate Department, Seniority Roster - Group 1, Clerks, Office of Director, Revenue Accounting, with a seniority date of February 1, 1943. He, at the time of the initial claim, had been an employee of the Southern Railway Company for more than twenty years, and had worked as a rate clerk for this entire period.

Mr. J. T. Bolling, Director, Revenue Accounting, in his letter of January 28, 1964, Employees' Exhibit A, addressed to Mr. Val Foster, Atlanta, Georgia, did disqualify Mr. Foster from his position of Rate Clerk in the Atlanta Accounting Department.

from the right to seek to make another displacement. When possible to secure tangible evidence, it will be used to support the judgment of the supervising official, and the employe will be entitled to receive a photostat or other copy of such evidence upon request.

(3) In event a hearing is held in connection with a case of this kind, either before or after assignment to the position sought, the management will insert in the transcript of the hearing a copy of the statement of duties and responsibilities of the position in question, and the employe will insert therein a statement of his education, training and experience which he claims have fitted him to undertake the new work. All questions and answers in such hearings will be confined to the clear purpose of establishing the applicant's ability or lack of ability to perform the required duties.

* * * * *

The so-called Chicago Agreement of August 21, 1954 contains the following provision:

"ARTICLE V.
CARRIERS' PROPOSAL NO. 7

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

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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."

(Exhibits not reproduced.)

OPINION OF BOARD: On January 28, 1964, Carrier notified Claimant that he was disqualified as a rate clerk, which he had been since 1946. On January 30, Brotherhood requested an investigation of the matter under

Rule 40. On January 31, Carrier replied that Rule 40 did not apply, and suggested that Brotherhood intended to request a hearing under the Mediation Agreement of April 21, 1932. On February 3, Brotherhood replied, still claiming that Rule 40 applied, but saying that "if . . . the Mediation Agreement . . . is the procedure to take in obtaining a hearing in this case, this would be my request." On February 7, Carrier replied, granting a hearing on the basis that it had been requested under the Mediation Agreement. That hearing was held on February 26, and on April 23, Carrier's Director of Revenue Accounting notified the Brotherhood that as a result of considering all of the evidence submitted at the hearing he found the disqualification "in order."

Meanwhile, on April 16, Brotherhood filed a formal claim:

"This claim is filed for and in behalf of Mr. Val Foster, account of being disqualified from his position as a Rate Clerk after more than twenty years.

* * * * *

This claim is filed regardless of what decision that will be made in connection with the hearing that was held on February 26, 1964, as requested.

Please advise when this claim will be paid or your reason for declining this claim."

On June 12, Carrier denied the April 16th claim; the claim was progressed through subsequent steps and, for the first time, in its letter finally declining the claim, Carrier raised as a defense that the claim, having been filed more than 60 days after the occurrence on which it was based, was barred by reason of non-compliance with Article V, Section 1(a).

Brotherhood argues that Carrier's defense that the claim is barred because it was not timely filed is wrong because Chairman Yancey "initiated immediate handling concerning the 'disqualification'" two days after the January 28th disqualification. If this argument is to be found valid, it would have to be on the basis that Mr. Yancey's January 30th letter requesting an investigation is deemed the initial claim by Brotherhood; but Brotherhood itself says in its Submission that "the initial claim was filed on April 16, 1964"; and the April 16th letter of claim includes an insistence that the claim filed in it be treated separately from the hearing proceeding initiated as a result of the January 30th letter. Thus, the fact is that the claim in the matter before us was not initially timely filed under the provisions of Article V.

The issue of non-compliance with Article V was presented by Carrier while the case was still on the property and was thus timely raised (NDC Decision 5); and none of the circumstances were such as to lead us to conclude that there was estoppel or waiver of Carrier's right to raise the issue; nor are there any circumstances which mitigate the effect of Brotherhood's failure to meet the time limit requirements of Article V. We will, therefore, dismiss the claim without considering it on its merits.

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 Brotherhood did not timely file the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 19th day of September 1967.