

Award No. 16329
Docket No. CL-16874

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Bill Heskett, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6173) that:

(a) Carrier violates the rules of the current Clerks' Agreement at Barstow when it fails and refuses to properly assign the Mail Separators and Truckers; and

(b) Carrier shall now assign such Mail Separators and Truckers with hours of 7:45 A.M. to 3:45 P.M.; 3:45 P.M. to 11:45 P.M.; and 11:45 P.M. to 7:45 A.M.; and

(c) The Carrier shall now compensate G. Owens, R. D. Wells, R. Rossier, R. J. Martin, R. D. Smith and M. L. Walton, Mail Separators and J. M. Gurule, W. D. Gaskins, N. Gurule, F. Pino, L. M. Chavez, C. D. Garcia, S. Hempton, W. E. Mund, W. D. Hawkins, D. J. Brown, A. Proudfoot, F. O. Hall and J. Vasquez, Truckers, at time and one-half rate for all time worked outside of what should have been their regular assigned hours, 7:45 A.M. to 3:45 P.M.; 3:45 P.M. to 11:45 P.M.; and 11:45 P.M. to 7:45 A.M., each day commencing November 1, 1963 and continuing until such violation of Agreement rules is corrected.

EMPLOYEES' STATEMENT OF FACTS: Barstow, California is an important junction point located on the main line in the Los Angeles Division of the Santa Fe Railway Company and is operated as a joint agency with the Union Pacific Railway Company. A considerable amount of traffic moves in and out of Barstow, and included in that flow of traffic is the movement and handling of United States Mail which requires, at this particular location, a twenty-four hour operation, seven days per week.

The traffic to or from the east that is handled at Barstow either moves to or from points north between Barstow and San Francisco or points south between Barstow and San Diego in which Los Angeles is included. Due to the volume and necessity of handling this mail around the clock, the following positions were, as of November 1, 1963, assigned to this particular work:

* * * * *

(3) The requirements outlined in paragraphs (1) and (2), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

The claim in the instant dispute was initially submitted in writing by Division Chairman L. D. Burkhart to Carrier's Superintendent A. K. Johnson in letter dated December 31, 1963. Copy of this initial claim letter and the other correspondence exchanged between the parties to and including the Carrier's highest officer of appeal, Assistant to Vice President-Personnel O. M. Ramsey, is attached hereto and identified as Carrier's Exhibits B to U, inclusive.

(Exhibits not reproduced.)

OPINION OF BOARD: Inasmuch as this claim must be dismissed on a "time limit" question, it is not necessary to consider the merits. The Organization, as disclosed by a perusal of the record, failed to perfect its appeal within nine months of the denial of the claim by the Carrier's highest officer and pursuant to Rule 43 (3) from Article V (c), 21 August, 1954, National Agreement, this Board does not have jurisdiction. See Awards 10347 (LaBelle); 10688 (Mitchell); 11483 and 11777 (Hall); 12417, 12418 and 12855 (Coburn); 12899 (Hall); 13673 (Weston); 13942 (Dorsey); 14139 (without referee); 14171 (Wolf); 14229 (Rambo); 14733 (Dugan); 15160 (Dorsey); 15504 (Mesigh); 15848 (Engelstein); and 15924 (Ives).

The claim was denied on 20 July, 1964, by Carrier's highest officer. On 4 November, 1964, the Organization requested that the time limit for perfecting its appeal be extended six months "... following date of ... final decision following our conference." The Carrier on 6 November, 1964, replies as follows:

" * * * * *

... According to my reckoning, you still have approximately six months remaining in which to appeal from my decision of July 20, 1964. Therefore, in this particular case I am willing to agree to stay the running of the time limit against you until we can hold conference which you have requested."

While the Organization in its letter of 17 November, 1965, alluded to the appeal time not commencing to run until after the conference, it is clear

from the Carrier's letter above quoted and its letter of 22 December, 1965, that all Carrier had ever agreed to do was "stay" the running of the nine months until the date of the conference.

At the time of the above quoted correspondence, three months and sixteen days had already run on the nine months' appeal time. Thereafter, it was simply "stayed" until the conference.

The conference was held on 8 April, 1966, and the appeal was filed with this Board on 30 November, 1966. Clearly, taking into full account the time which had run, and allowing for the stay accorded by Carrier prior to the conference, more than nine months had passed before the appeal was filed.

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 the claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of May 1968.