



Award No. 17245

Docket No. MS-16441

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

John B. Criswell, Referee

PARTIES TO DISPUTE:

EDWARD J. BARBER

**NEW YORK CENTRAL RAILROAD COMPANY, EASTERN
DISTRICT (Except Boston & Albany Division) AND
NEW YORK DISTRICT**

STATEMENT OF CLAIM: Question Involved: Retro-active compensatory benefits due Edward J. Barber, as a displaced employee from November 1958 to October 1963, under an agreement between The New York Central Railroad Company and the Employees Thereof Represented by the Order of Railroad Telegraphers, dated December 10, 1962.

Carrier, by denying to pay this claim, has violated the agreement of December 10, 1962. Their reasons for denial are "displaced on a higher rate" and "expiration of time limit." Under Article III, Article VIII and Article X of the agreement the Carrier is obligated to make payment on this claim in accordance with the Agreement.

OPINION OF BOARD: This case involves a claim by an individual employe of the former New York Central Railroad Company, Mr. Edward J. Barber, in which he seeks an award requiring Carrier to pay him a displacement allowance of \$4,253.82 and an additional amount of \$3,801.60 for a transportation expense, alleged to be due under certain provisions of an agreement between the Carrier and its employes of which Claimant is a member.

Insofar as the claim seeks to make the Organization (Transportation-Communication Employees Union, formerly the Order of Railroad Telegraphers) a party to the proceedings it must be dismissed. It is well settled that this Board has no authority to consider or decide disputes involving a labor organization and its members.

With respect to the claim for automobile expense of \$3,801.60, a careful examination of the record shows no evidence that any such claim was presented to the Carrier and made a part of the dispute so as to make it referable to the Board under provisions of the Railway Labor Act. This portion of the claim must be dismissed.

Carrier's defense against the claim for \$4,253.82, representing an alleged displacement allowance resulting from abolishment of a position occupied by Claimant on November 4, 1958, includes a contention that it was not presented to Carrier within one year from the effective date of the agreement alleged to be involved. This agreement contains a clear require-

ment that such claims must be submitted within that time. The effective date of the Agreement was January 7, 1963.

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The record shows that under date of October 28, 1965, in connection with another incident occurring in April, 1963, the Claimant's representative General Chairman informed Carrier that Mr. Barber would not accept its figures—which were confined to the 1963 occurrence—because he contends he is entitled to an allowance based on the 1958 occurrence, and asked the Carrier to revise its computations and to compensate Claimant accordingly. Carrier rejected this request on the sole ground that no claim for an allowance prior to that covering the 1963 incident had been received by Carrier.

Settlement of the 1963 incident was eventually effected, and the Organization did not further progress the claim concerning the 1958 abolishment, which is the subject now before us.

Mr. Barber, in his rebuttal statement, contends that the earlier claim was submitted "through the General Chairman," within the one-year limit. The evidence submitted in support of this contention, however, is only a letter from the General Chairman to Mr. Barber, informing him that the Agreement does not provide for retroactive compensatory benefits under the circumstances surrounding the 1958 occurrence. This letter cannot be considered as in any way amounting to evidence that any such claim was presented to Carrier within the one-year period provided for by the Agreement.

As further evidence, Mr. Barber submits a copy of a letter from Carrier's Mr. R. C. Harrison, dated November 27, 1963, requesting data "in connection with claim for benefits to which you may be entitled under the ORT Agreement, dated December 10, 1962." There is a handwritten notation on the bottom of this letter as follows: "Formal claim submitted immediately for period 11/7/1958 to 11/1/1963 plus claim for driving expense." Mr. Barber contends that this document evidences submission of the present claim to the Carrier.

Viewed in perspective most favorable to Claimant, however, the conclusion he reaches requires speculation and an inference that is not apparent. The letter appears to have reference to the April 1963 incident alone. It cannot serve to overcome Carrier's showing that the claim was not filed until the General Chairman's letter of October 28, 1965.

The record, therefore, fully supports the Carrier's position on this point, requiring dismissal also of this portion of the claim.

Having reached this conclusion, which disposes of the entire claim, there is no need to explore other contentions of the Carrier and we express no opinion concerning them.

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 the claim must be dismissed in its entirety for the reasons stated in the Opinion.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June 1969.