Award No. 18636
Docket No. CL-18987

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

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

BOSTON AND MAINE CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6838) that:

1. Carrier violated Rule 24(b), as amended, of the Clerks Agreement effective September 1, 1952 also, Decision CL51 dated July 17, 1962 when it refused to properly compensate, L. A. Henderson Chief Engine Crew Dispatcher, Engine Terminal, Boston, Mass., for work performed on May 26, 1969 (Memorial Day Holiday).

2. Carrier shall now be required to pay L. A. Henderson his then regular days pay of $31.04 for May 26, 1969 in addition to payments already made.

EMPLOYE'S STATEMENT OF FACTS: Claimant entered service October 18, 1940 and has a seniority date of March 24, 1941. At time of claim he owned the regular position of Chief Engine Crew Dispatcher at Carriers' Engine House, Boston, Mass., working regularly Monday thru Friday from 7:30 A. M. to 3:30 P. M.; Saturday and Sunday, rest days; daily rate $31.04.

Claimant had been out on sick leave from April 22, 1969, returning to work on the Memorial Day Holiday, Monday, May 26, 1969. He was paid punitive time only for working on that day, instead of his regular days pay in addition to the punitive rate of time and one-half.

On June 3, 1969 his General Foreman wrote him as follows:

"Boston - June 3, 1969

Time Claim
Holiday Pay

Mr. L. A. Henderson
Chief Engine Crew Dispatcher

On your time return for the week ended May 29, 1969, you claimed eight hours straight time and eight hours at the punitive

I wrote you under date of October 7, 1969 concerning claim of L. Henderson for a days pay account working on the holiday May 26, 1969.

You acknowledged this on Oct. 8, 1969, assigned claim #1074 to it and stated conference would be arranged.

Yours December 5, 1969 confirms my conference with Mr. Orr on December 3, 1969.

I replied to this on December 9, 1969.

No reply has been received to date nor to my subsequent letter of January 6, 1970.

As you know the claim was advanced on the basis of time limit violation at local level and now appears to be in a double status.

May I have your early reply.

Yours truly,

/s/ J. Connor
General Chairman"

As no reply has been made the matter is referred to your Honorable Board for decision.

CARRIER'S STATEMENT OF FACTS: On November 2, 1970, the Carrier delivered the following letter to General Chairman J. Connor representing the claimant in this case:

"This refers to the above claim of Chief Engine Crew Dispatcher L. A. Henderson for a day's pay at straight time rate on May 26, 1969 (Memorial Day), under the provisions of Decision CL-62, the local holiday agreement.

A review of the file indicates at least one clear violation of the time limit rule, Decision CL-51, the first contention made in your appeal of November 7, 1969, and in subsequent letters to the Personnel Department. A second violation subsequently occurred.

The claim will be paid."

OPINION OF BOARD: The Record in this docket reflects a procedural defect under the parties' Decision CL-51 (Article V of the August 21, 1954 National Agreement governing time limits for handling and progressing claims and grievances), in that the appeal timely presented to the Chief Mechanical Officer on July 8, 1969, was denied by that Officer's successor in letter dated September 9, 1969 and actually received by that General Chairman on September 12, 1969, sixty-six (66) days after appeal had been made, thereby exceeding by six (6) days the 60-day time limit proviso.

The record indicates, however, that the claim before the Board has been allowed by the Carrier under the provisions of the time limit rule. The claim is, therefore, moot and will be dismissed.

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 Claim be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July 1971.

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