

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19524
Docket Number MS-19664

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (H. G. Skidmore
(George P. Baker, Richard C. Bond, Jervis Langdon, Jr.,
(and Willard Wirtz, Trustees of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of my intention to file an ex parte submission on thirty (30) days from the date of this notice covering an unadjusted dispute between myself, H. G. Skidmore, and the Penn Central Transportation Company involving the question or claim:

I claim the Agreement entered into by and between the Pennsylvania-New York Central Transportation Company, now known as the Penn Central Transportation Company, and Clerical Other Office, Station and Storehouse Employees of the Pennsylvania - New York Central Transportation Company represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees and the Employees Pre-Merger Protective Agreement, now called the Merger Protective Agreement, have been violated by and through the actions of the officials of the Penn Central Transportation Company in not granting me the difference between my regular pay and that received during the time served for jury duty.

OPINION OF BOARD: Petitioner-claimant, Mr. H. G. Skidmore, makes claim for the difference between his regular clerks' pay and the amount of public remuneration he received for jury duty performed in April 1971.

FACTS

There is in evidence an Agreement entitled "Agreement entered into By and Between the Pennsylvania-New York Central Transportation Company (now Penn Central Transportation Company) and Clerical, Other Office, Station and Storehouse Employees of the Pennsylvania-New York Central Transportation Company Designated Herein Represented by Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, Effective February 1, 1968."

Claimant was an employee of the former New York Central Railroad. At the time of claim he was working for the merged companies, the Penn Central Transportation Company, on property of the former Pennsylvania Railroad as a Sales and Service Clerk of Reservation and Information, Ticket Office, Penn Station, N.Y.

On May 19, 1971, Claimant made written claim for the difference between jury pay and his regular pay account of jury duty in April 1971. The claim was properly progressed through August 11, 1971 conference between Mr. H. A. Tekworth, Division Chairman of the Clerks' Organization and Mr. J. W. Shuron, Carrier's Superintendent-Labor Relations and Personnel. Following conference the claim was denied by Mr. Shuron's letter dated August 19, 1971.

On August 28, 1971, claimant wrote as follows to Mr. N. P. Patterson, Carrier's Director-Labor Relations:

"Irrespective of Mr. Shuron's contention that my claim for the difference between my regular pay and that received for Jury Duty is without merit and is therefore denied, I maintain this decision is in violation of the Employees Pre-Merger Protective Agreement contract regarding the guarantees of the rules, rights, privileges and fringe benefits prior to the merger. I also maintain it is an abrogation of the rules agreement because the answer from Mr. E. J. Gaynor was not received within the thirty (30) day limit as stipulated in Rule 7 - B - 1 paragraph (c). I therefore request immediate payment of the difference involved."

In a letter to claimant dated September 2, 1971, Mr. Patterson stated in pertinent part:

"We have been advised that your claim for Jury Duty Allowance had been discussed between the Superintendent-Labor Relations and the Division Chairman at the regular monthly meeting held on August 11, 1971, and that a letter denying your claim has been mailed to the Division Chairman on August 19, 1971.

In the event this case is progressed beyond the level of the Superintendent - Labor Relations and the Division Chairman, it will have to be progressed in accordance with the provisions of Rule 7-B-1(g) and (h)."

Claimant replied to Mr. Patterson's September 2 letter by a September 9, 1971 letter which stated:

"I respectfully advise that as my claim with reference to this grievance on Jury Duty pay has not been honored on its merits nor on the technicality of Rule 7 - B - 1 paragraph (c) my only recourse was to revert to Rules 7 - A - 1 and 6 - A - 1 for my protection and the progression of this grievance."

Subsequently, in a September 15, 1971 letter from Mr. Patterson to claimant, which referred to claimant's letters dated August 28 and September 9, 1971, Mr. Patterson repeated his statement that further progression of the claim would have to be in accordance with Rule 7-B-1 (g) and (h).

Subparagraphs (g) and (h) of Rule 7-B-1 read as follows:

"(g) When requested, a submission in the following form will be prepared by the Superintendent of Personnel and Division Chairman, covering a controversial matter not disposed of with the Superintendent of Personnel-six copies of each to be furnished to the Division Chairman by the Superintendent of Personnel:

- (1) Subject, setting forth specifically the nature of the controversy, and the rule or rules involved.
- (2) Joint Statement of Agreed Upon Facts, which shall contain all the pertinent facts necessary for the determination of the issues by those who may be unfamiliar with the situation. If, after a diligent effort, the parties are unable to agree upon a joint statement of facts the parties will state the facts to be separately set forth in the submission.
- (3) Position of Employees.
- (4) Position of Company.

(h) The Manager of Labor Relations will meet monthly with the General Chairman for the purpose of disposing of matters not settled with the Superintendents of Personnel. These meetings will be held on dates scheduled in advance and the General Chairman or the Manager of Labor Relations will list in writing to the other party at least 14 calendar days in advance subjects for discussion at such meetings. Decisions will be rendered in writing."

CONTENTIONS OF PARTIES

Petitioner contends the claim is covered by the rules of compensation governing his prior employment with the New York Central Railroad Company, and that the claim should be paid under the Merger Protective Agreement of May 20, 1964. Petitioner further asserts that he progressed his claim through paragraph (e) of Rule 7-B-1; thereafter, because there were no other procedural rules applicable to an individual processing his own claim, he processed his grievance in accord with Rules 7-A-1 and 6-A-1.

Carrier contends the handling on the property failed to comply with paragraphs (g) and (h) of Rule 7-B-1, that the claim lacks merit, and that this Board lacks jurisdiction because Section 1 (e) of the Merger Protective Agreement provides an Arbitration Committee to dispose of disputes regarding the interpretation and application of the Merger Protective Agreement.

RESOLUTION

The record shows that paragraphs (g) and (h) of Rule 7-B-1 were not complied with by the handling of this claim on the property. There is not a scintilla of evidence to the contrary.

The procedures agreed to by the Carrier and Organization for handling disputes on the property do not change or cease to operate because, as in this case, an individual processes his claim after partial handling by the Organization. Paragraphs (g) and (h) of Rule 7-B-1 were part of the usual manner for handling disputes on this property and, consequently, the Petitioner's failure to progress the claim in the usual manner means that the Board lacks authority to take jurisdiction. See Award No. 6798 (Simmons), Award No. 1404 (Chappell), and Award No. 15075 (Without Referee). Accordingly, we shall dismiss 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 Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

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That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the claim be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

E. A. Kellum
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1972.