

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 19781
Docket Number CL-19763

C. Robert Roadley, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Chicago, Milwaukee, St. Paul and Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7091) that:

- 1) Carrier violated the Clerks' Rules Agreement at Milwaukee, Wis. when it failed to assign the senior qualified employee requesting same, to the temporary vacancy on Yard Clerk Position 08800 effective February 16, 1971.
- 2) Carrier treated employee L. Bintz unfairly and unjustly when it acted in an arbitrary manner in denying him his seniority rights by not assigning him to the temporary vacancy on Yard Clerk Position 08800 after requesting same under the provisions of Rule 9 (g).
- 3) Carrier shall now be required to compensate employee L. Bintz an additional day's pay at the rate of Position 08800 for each day the position worked during the period February 16, 1971 and February 26, 1971, inclusive.
- 4) Carrier shall now be required to compensate employee L. Bintz at the penalty rate of Position 08800 for any and all overtime work performed on this position during the period February 16, 1971 to and including February 26, 1971.

OPINION OF BOARD: The claim before us involves the alleged violation, by the Carrier, of claimant's seniority rights when he was not assigned to fill a temporary vacancy, for which claimant had submitted a bid, and that, therefore, he be compensated with an additional day's pay for each day the position involved worked plus overtime worked on the position, during the dates specified in the claim.

Before addressing ourselves to the merits of the claim we must reach a determination as to whether there is present a procedural defect in the handling of the claim on the property, as alleged by the Carrier. A careful review of the record shows the following undisputed facts:

1. Under date of April 29, 1966 the Carrier issued a directive setting forth the procedure for the handling of claims re positions involved herein as follows:
 - (a) Officer to receive claim - Asst. Supt.
 - (b) Officer to receive first appeal - Supt.
 - (c) Officer to receive last appeal - Vice Pres., Labor Rels.

2. Rule 36 - Claims and Grievances (taken from Article V of the August 21, 1954 Agreement), sets forth the time limits, i.e. claim to be filed within 60 days from date of occurrence; if disallowed, Carrier to so notify person filing claim within 60 days from date of filing; rejection of decision to disallow claim and notification of appeal to be submitted in writing to the representative of the Carrier within 60 days of the receipt of notice of disallowance. Failing to comply with the appeal provision, the matter shall be considered closed.
3. Claimant filed, in his own behalf, his claim within the prescribed 60 day period specified in Rule 36.
4. The Asst. Supt. declined the claim within the time limits set forth in Rule 36.
5. Five days after receipt of declination of claim the General Chairman wrote to the Asst. Supt. that the claim initiated by claimant "is being amended to the extent that it is being withdrawn from your handling and a revised claim is being filed directly with Mr. L. W. Harrington (Vice Pres.-Labor Relations) as provided for under provisions of Rule 22 (i)."
6. No notification was submitted to the Asst. Supt. that his decision was not accepted or that the claim was being timely appealed to the next highest officer so designated to handle such appeal.
7. The portion of Rule 36 (b) regarding the handling of claims on first appeal states, in pertinent part; "Failing to comply with this provision, the matter shall be considered closed, *****."

The record is clear that the Organization did not notify the Carrier that the decision of the Asst. Supt. was not accepted, nor did they notify Carrier representative that the initial decision was being appealed to the officer designated to receive such appeal. Rather, the Carrier was advised that the original claim was being withdrawn and that a revised claim was being filed directly with the Vice President of Labor Relations. It is obvious that claimant did not comply with the requirements of Rule 36 when he failed to notify Carrier that the declination had been rejected and that appeal would be taken to the next higher officer designated to receive such appeal.

Award 17959 states:

"Further, a review of the record indicates that even before arriving at the stage wherein the claim was amended, the Carrier Officer authorized to receive claims in the first instance declined the claim but has never been notified in writing that his declination has been rejected. This combined with the later amendment of the claim, stands in violation of Schedule Rule 36 of the Agreement, the time limit Rule. Hence, we will dismiss this claim on the procedural provisions of that Rule, without considering the merits of the case."

Many other Awards of this Board have, likewise, affirmed the principle reiterated above. See Awards 8564, 10317, 10793, 13511, etc.

Numerous other Awards of this Board have also held, under circumstances similar to those present in the instant case, that failure to timely appeal a claim on the property bars any further prosecution of the claim. See Awards 10179, 11980, 16283, 18007.

Therefore, in view of the fact that Carrier was not notified that the initial decision denying the claim was rejected and also that appeal to the next higher officer designated to receive such appeal was not timely taken, we have no alternative but to dismiss the claim on the procedural provisions of Rule 36 of the Agreement without considering the merits of the case.

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 be dismissed.

Award Number 19781
Docket Number CL-19763

Page 4

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. G. Killen
Executive Secretary

Dated at Chicago, Illinois, this 25th day of May, 1973.