

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20063
Docket Number CL-20045

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(The Central Railroad Company of New Jersey
((R. D. Timpany, Trustee)

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7206) that:

(a) Carrier violated the Clerks' Agreement, particular reference to Rule No. 37, when they disqualified Mr. E. Hursey from position of Checker, Terminal area, following a hearing and investigation held on October 21, 1971, and

(b) Carrier shall be required to compensate Mr. E. Hursey a day's pay for October 22, 1971 and each subsequent day he is withheld from assignment as Checker, Terminal Area, and

(c) Carrier shall be required to clear Mr. E. Hursey's record of all alleged charges or allegations which may have been recorded thereon, as a result of the alleged violation named herein.

OPINION OF BOARD: This dispute originally involved a claim for reversal of a Carrier disqualification decision and for compensation for time lost. The claim as presented to the Board involves a claim for compensation only.

Following a hearing held on October 21, 1971, at which the Claimant was represented by his duly accredited representative, pursuant to the Clerks' Agreement, the Carrier found Claimant guilty of charges of "failing to carry out instructions of Yardmaster and poor performance of duty while Checker, Yard 'B', Elizabethport Yard on October 15, 1971, 6:00 a.m. to 2:00 p.m." Based on this finding of guilt the Carrier took action to disqualify Claimant as Checker, effective October 22, 1971. The Carrier's action was appealed by the Organization by letter dated November 22, 1971; this letter did not include a claim for monetary loss. The Claimant's disqualification was further appealed to the Carrier's Vice President-Employee Relations, who, under date of February 29, 1972, wrote as follows to the General Chairman:

"Your file 1170-993.288, claiming one day's pay commencing October 22, 1971, on behalf of Elijah Hursey.

We are agreeable to lift the disqualification assessed by Superintendent Nelson, effective October 22, 1971, on appeal under Rule 37(h), and his record will be so noted.

It is agreed request for compensation is withdrawn by the organization."

In a reply letter dated April 21, 1972, the General Chairman advised as follows:

"The last sentence of the letter, reading - 'It is agreed request for compensation is withdrawn by the Organization.' is not correct. During conference on the claim, held on February 23, 1972, you advised that you were willing to remove the disqualification, and stated that you were not willing to allow compensation as claim for compensation had not been timely filed on the local level. We understood what you were saying, but did not withdraw request for compensation, expecting that your conference position would be stated in your reply to the claim.

We will appreciate your correcting the error in order that the record will properly state the reason for non allowance of compensation."

The Carrier made no objection to revising the record as requested by the General Chairman.

From the foregoing, and the whole record, we conclude that Claimant's disqualification was lifted by Carrier as a result of conference at the highest level of appeal. Consequently, paragraphs (a) and (c) of the Statement of Claim are dismissed as moot.

With respect to paragraph (b) of the Statement of Claim, we believe the Carrier's contention that the compensation claim was not timely made is well taken and should be sustained. It was only on appeal that the claim for compensation was advanced by the Organization. Article V of the Time Limits rule requires that compensation claims shall be filed with the employee's supervisor. This was not done in this case. Therefore, we shall dismiss paragraph (b) as asserting a claim which has not been handled on the property in compliance with Article V of the Time Limits rule.

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;

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

The claim is dismissed in accordance with the Opinion.

A W A R D

Claim dismissed as per Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: AW Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of December 1973.