

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20268
Docket Number SG-19904

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railroad Signalmen
(
(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: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the former Pennsylvania Railroad Company that:

(a) The Company violated Article 4, Section 20 of the Agreement when, effective July 3, 1969, it awarded Position No. 4049 as shown on Bulletin No. 563-A dated June 20, 1969, to B. J. Ervin, Maintainer Communications, a junior employee, as shown on Award Bulletin No. 563-B dated July 9, 1969, instead of H. E. Elmer, Maintainer C&S, who also made application for the position in question.

(b) H. E. Elmer, Maintainer, C&S, headquarters Trenton, N. J., be given the same opportunity that was afforded B. J. Ervin and that he (Elmer) be compensated for the differential in pay between the Asst. Foreman rate and his present rate as Maintainer C&S from July 3, 1969--the date Position No. 4049 became effective--and to continue until Mr. Elmer's rights have been rewarded [sic].

OPINION OF BOARD: This claim arose when the Carrier decided that the Claimant was not qualified for a certain position and, for that reason, awarded the position on bid to a junior employee. Under date of July 19, 1969 a claim, in the nature of a continuing claim, was filed alleging that Carrier had wrongfully awarded the position in question to a junior employee on July 3, 1969. This claim was not denied by the Carrier until October 22, 1969, which was beyond the time limits provided by the August 21, 1954 National Agreement. By letter dated November 21, 1969, the Carrier conceded that its initial denial of the claim was not timely and it agreed to pay (and has paid) the claim for the period July 3, 1969 to October 22, 1969. In further handling on the property the Employees pressed the merits of the claim and also asserted that Carrier's initial default under the time limits rendered the Carrier liable for the entire claim as presented, i.e., beyond October 22, 1969 and until the Claimant was placed in the position. However, in their Submission to this Board, the Employees make no mention of the merits of the claim and base their right to prevail exclusively on the Carrier's failure to render a timely denial to the initial claim.

Thus, the sole issue raised by the instant record is whether the Carrier's failure to render a timely denial to the initial claim made it liable for the claim beyond October 22, 1969, without regard to the merits, or whether the Carrier's liability under the time limits stopped when it issued its denial letter on October 22, 1969, leaving the claim subsequent to such denial to be considered on its merits. In National Disputes Committee Decision 16, Third Division Docket CL-12336 (Article V-8-21-54 Agreement), it was stated:

"The National Disputes Committee rules that receipt of the carrier's denial letter dated December 29, 1959 stopped the carrier's liability arising out of its failure to comply with Article V of the August 21, 1954 Agreement.

DECISION: Claim for compensation for each day from August 16, 1959 to December 30, 1959 shall be allowed as presented, on the basis of failure of the carrier to comply with the requirements of Article V of the Agreement of August 21, 1954, but this shall not be considered as a precedent or waiver of the contentions of the carrier as to this claim for dates subsequent to December 30, 1959, or as to other similar claims or grievances."

The above decision leaves no doubt that, in the facts of this dispute, the Carrier's liability under the time limit provisions was stopped by its October 22, 1969 letter of denial of the claim. See also Award 16573. The Employees have not argued the merits of the claim for the period subsequent to October 22, 1969 and, consequently, the merits of the claim are not before this Board. Accordingly, we shall deny 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 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

Award Number 20268
Docket Number SG-19904

Page 3

The Carrier conceded a time limits violation and made payment therefor on the property. No merit issue was presented to the Board.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 14th day of June 1974.