

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21018
Docket Number CL-20886

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Robert W. Blanchette, Richard C. Bond
(and John H. McArthur, Trustees of
(the Property of Penn Central
(Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-7639) that:

(a) Carrier violated the Scope Rule and Rule 3-C-2(a) of our agreement between the Penn Central Transportation Company and employees represented by the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees, effective February 1, 1968 when they abolished Jobs No. 7 and 8 at the Shell Plant, Roxana, Illinois at the end of their tour of duty on August 31, 1971 and gave this work to the clerks of the Illinois Terminal Railroad, who are not covered by our agreement, starting on September 1, 1971.

(b) When Penn Central clerical jobs No. 7 and 8 were abolished, to become effective at the end of their tour of duty on August 31, 1971, new positions were bulletined on the Illinois Terminal Railroad under Illinois Terminal clerical bulletined C-716 and C-717, known as positions Nos. 432, and 433, starting on September 1, 1971 with the same identical duties of former Penn Central positions 7 and 8 and at the same location which was inside the Shell Plant, Roxana, Illinois.

(c) The description of the work as shown on Illinois Terminal clerical bulletin reads as follows: "This position maintains joint records for the Illinois Terminal, GM&O and the Penn Central Railroads. Must be familiar in handling demurrage and intra-plant switching charges." This is the same identical work that was performed by incumbents of Jobs No. 7 and 8, held by Penn Central clerks. This is work that has been performed historically by Penn Central Clerks for the past 36 years. The Illinois Terminal clerks are not covered by the Penn Central clerical agreement. Salaries of Penn Central Jobs No. 7 and 8 were divided proportionally between Illinois Terminal, GM&O and the Penn Central Railroads. Under Illinois Terminal Jobs No. 432 and 433, effective September 1, 1971 the salaries are still divided proportionally by the three railroads. This is a joint operation and has been historically.

(d) Claim is being made for Group 1 employees, J. R. Chamness and E. D. Talkington, for eight hours per day at the rate of Job No. 7 and 8 which is \$31.73 per day starting on September 1, 1971 and all subsequent Monday through Fridays and continuing until violation ceases, work returned to clerks of the Penn Central Railroad and claimants paid for wage loss.

(e) Job No. 7 at the Shell Plant, Roxana, Illinois was held by Mr. J. R. Chamness prior to September 1, 1971. Hours were 6:00 A.M. to 2:00 P.M. Work week was Monday through Friday with Saturday and Sunday as days of rest. Rate of pay is \$31.73 per day and location was inside the Shell Plant.

(f) Job No. 8 at the Shell Plant, Roxana, Illinois was held by Mr. R. M. Porter prior to September 1, 1971 with the hours 1:15 P.M. to 10:15 P.M. (1 hour for lunch). Work week was Monday through Friday with Saturday and Sundays as days of rest. Rate of pay is \$31.73 per day and the location was inside the Shell Plant. Mr. Porter at the present time is on sick leave of absence.

(g) The Carrier violated the Scope Rule of our Agreement by assigning this work to those employees not covered by the current Agreement. They have also violated Rule 3-C-2(a) which provides the method for assigning of work from an abolished position. The Rule requires the assignment of any remaining work from the abolished position to another position covered by this Agreement and when no other position remains, they are given the right to assign such work only to an Agent, Yardmaster, Foreman or other Supervisory employee and further provided there is less than four hours work per day of the abolished position remaining. In this case there are eight hours work remaining on the positions involved.

(h) Claim is filed for violation of the Scope Rule and Rule 3-C-2(a). a

OPINION OF BOARD: 3
This dispute contains a threshold issue which must be dealt with before we can reach the merits.

The dispute herein was finally denied, after appropriate handling on the property, by the Director of Labor Relations of the Carrier by letter dated May 1, 1973. Rule 7-B-1 provides that all claims shall be barred after such a denial unless proceedings are initiated within one year of the denial before an appropriate adjustment board. By letter dated April 11, 1974, in response to the General Chairman's request, Carrier agreed to extend the time limits by 60 days - or until June 30, 1974. The letter of intent to this Division was dated July 1, 1974 and received thereafter. It seems evident that this initial step by the Organization to refer the dispute to the Adjustment Board was beyond the time limits provided in the Agreement, as extended.

It is well established that a Claim which has not been progressed in accordance with the Agreement does not meet the requirements of the Railway Labor Act and this Board lacks jurisdiction to consider it. In one of a large number of Awards on this subject, Award 12767, we said:

"....the Board finds that in order to have avoided the time limitations, the Organization must have filed its appeal before midnight on January 31, 1960. Since it waited one day too long, the time limits expired at midnight, January 31, 1960, and the claim is therefore barred."

Similarly, in the instant case, the Organization simply was at least one day too late. The inescapable conclusion is that the Board has no jurisdiction over this dispute.

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 the Board does not have jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1976.