

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 21983
Docket Number CL-21834

Herbert L. Marx, Jr., Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and
(Steamship Clerks, Freight Handlers,
(Express and Station Employees
(
(Norfolk and Western Railway Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-8216) that:

1. Carrier violated and continues to violate the Agreement between the parties when on February 6, 1975, the position of Telegraph Operator Relief No. 1 was abolished and work of that position assigned to clerical positions and to non-contract clerical positions without proper notice under Article VIII, Section 3 of the February 25, 1971 Agreement.

2. Claimant Mr. P. Long shall be allowed the protection afforded by Article VIII, Section 6 of the February 25, 1971 Agreement.

OPINION OF BOARD: The Organization claims that the Carrier is in violation of Article VIII, Section 3 of the February 25, 1971 Agreement referring to Clerk-Telegrapher consolidation of positions for failure to give proper notice. The Organization further argues that the Claimant should receive the protection specified in Article VIII, Section 6 of the February 25, 1971, Agreement.

The claims arose from actions taken by the Carrier in abolishing the position of Telegraph Operator Relief No. 1 on February 6, 1975. Simultaneous with the action, the incumbent employee claimed a posted job which had been filled on a temporary basis by the Claimant, who went to the Extra List and was subsequently furloughed.

The claim was processed in order through the Carrier's highest designated officer, who denied the claim on July 1, 1975.

A conference was held on August 18 or 28, 1975, concerning the Carrier's answer. On March 25, 1976, the Organization wrote to the Carrier's highest designated officer, providing information claiming to refute "the statement made in your letter of July 1, 1975."

There is no record of reply of any kind from the Carrier. By letter of May 28, 1976, the Organization notified the National Railroad Adjustment Board of its intention to bring the matter to the Board.

Rule 38 - TIME LIMIT ON CLAIMS, Paragraph (c) reads in part:

" . . . All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board . . . It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

There is no written record of agreement for any time-period extension.

Clearly more than nine months elapsed between the Carrier's answer and the filing of the claim with the Board. Award No. 17977 (Dorsey) covers this point:

"As to the contention of the Petitioner that the nine months' limit began from the date of conference on September 11, 1968, the rule is clear in providing that the nine months' period may be extended by agreement. The record contains no evidence of an agreement to extend that period. This Board has consistently held that where precise time limits exist they must be complied with unless waived by the parties; but, neither an invitation to discuss a pending case nor the actual discussion, in and of themselves, can be interpreted as time limit extension agreements. (Awards 13941, 12417, 11777, 11597, 10347, among others.)"

Having found that the claim must be dismissed by the specified intent and language of the parties' Agreement, any discussion of the merits by the Board would be both improper and futile.

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.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March 1978.