

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23947
Docket Number CL-24196

George S. Roukis, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(Staten Island Rapid Transit Operating Authority

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(GL-9455) that:

1. The Carrier violated the established practice and rules of the Brotherhood, when they physically transferred General Ledger Clerk J. Pisano, from his regular position to the position of Cashier Paymaster, a non-represented position, outside the scope of the Agreement.

2. The Carrier will pay Clerk J. Pisano, in addition to any monies already earned, the punitive rate of pay for all time spent on, other than his regular assignment, as follows:

6/14, 6/19, 6/21, 6/22, 6/26, 6/27, 6/29, 7/2, 7/3, 7/5, 7/6,
8/6, 8/7, from 9:20 A.M. to 11:15 A.M. and from 1:20 P.M. to
3:00 P.M.

3. The Carrier will also pay Clerk J. Pisano, at the punitive rate for all the time he was physically located in the Cashier's Office performing the work of the Cashier - Paymaster and the Assistant Cashier, who was on vacation as follows:

7/9, 7/10, 7/11, 7/12, 7/13, 7/16, 7/17, 7/18, 7/19, 7/20, 7/23,
7/24, 7/25, 7/26, 7/27, 7/30, 7/31, 8/1, 8/2, 8/3, from 8:45 A.M. to
5:00 P.M.

OPINION OF BOARD: Claimant contends that Carrier violated the Agreement when it transferred him to the position of Cashier Paymaster, a non-represented position, during the time set forth in the statement of claim. He argues that he was physically transferred from his desk in the General Office Section to the cashiers office to perform the myriad duties of the Agreement empty position.

The Organization filed a claim on his behalf on August 9, 1979 averring that Rule 5(b) of the Agreement was violated which was denied by Carrier on October 3, 1979. The local chairman then apprised the Director of Finance and Administration on October 10, 1979 that he was rejecting Carrier's denial and an appeals hearing was held with the General Superintendent on November 8, 1979. On December 31, 1979, Carrier again denied the claim on the grounds that it lacked Agreement support and asserted that the salary range for the position of cashier provided a starting salary lower than that which Claimant enjoyed as a General

Ledger Clerk. In essence it argued that it was unreasonable to pay a higher salary for the performance of a routine function which was incidental to clerical positions.

The Organization responded to this denial on September 29, 1980 and requested that a Public Law Board be established to adjudicate the claim. Carrier answered this communication on October 20, 1980, but noted that it had not received the Organization's letter until October and further handling of the claim was barred by Rule 48(c) of the controlling Agreement. Carrier stated that while it appeared that the Organization's letter was dated September 29, 1980, it was actually posted and received in October, the tenth month following denial of the appeal. The Organization attempted to persuade Carrier to establish a Public Law Board during the subsequent months but without success and petitioned the National Railroad Adjustment Board on April 1, 1981 to decide the case. Carrier had taken the position that the claim was now stale since Claimant had not initiated proceedings before the Division or some other tribunal within nine (9) months of the denial of appeal and substantively argued that the claim lacked Agreement support.

In our review of this case, we agree with Carrier's position on the timeliness question. The claim was formally denied on December 31, 1979 but the Organization didn't file a notice of intent with the National Railroad Adjustment Board until April 1, 1981 notwithstanding, the explicit nine (9) months time limits of Rule 48(c). To be sure, the Organization wanted to get the case before a Public Law Board on the property, but Carrier's indifference to its request for such a Board does not overcome the breach of time limits. The Organization could have insisted that a Public Law Board be established and if the Carrier continued to refuse to voluntarily establish such a Board the Organization could have pursued the matter further with the National Mediation Board as provided in Section 3, Second of the Railway Labor Act and published Federal Regulations governing the establishment of Public Law Boards. The timeliness question of the Organization's request for the establishment of a Public Law Board could then have been decided by the Public Law Board. Moreover, it was still within the Organization's power to docket the case with the Third Division in accordance with the time limits of Rule 48(c) and its failure to comply properly with this requirement negates the petition. Also, there were no indications that Carrier implicitly waived the definitive time limits of Rule 48(c) and thus we must deny the claim. Rule 48(c) is a clear and unambiguous provision which governs the orderly progression of grievance appeals and the parties are enjoined by its specificity and practicality to observe strictly its time limitations.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 14th day of July 1982.