

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25497
Docket Number CL-24807

George V. Boyle, Referee

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

STATEMENT OF CLAIM: Carrier did not violate the Agreement with the Brotherhood of Railway, Airline and Steamship Clerks "by requiring and/or permitting employees of Union Camp Paper Corporation, Savannah, Georgia, to perform schedule clerical work", as alleged by the Clerks' Organization.

Since the Agreement was not violated, the "senior idle clerical employee, extra in preference, on the Savannah District, Sandra L. Schunemann or otherwise" is not entitled to "a day's pay at the rate of the Billing Clerk position, Dillard Yard, Savannah, Georgia, for Monday, April 7, 1980, and continuing each date", as claimed by the Clerks' Organization.

OPINION OF BOARD: The claim brought before the Board by the Carrier involves the use of a Cathode Ray Tube by employees of one of the major customers of the Carrier's Savannah, Georgia Terminal. The CRT was installed on the customer's premises and began operation on March 7, 1978. The customer's employees entered bill of lading information on the CRT which is connected to a terminal in the Carrier's Dillard Yard in Savannah. There the BRAC covered employees use the data in processing waybill information.

There is no dispute that the customer's employees generated bills of lading heretofore and transmitted them to the BRAC clerks by messenger, nor that they did not do the same with waybills.

Here the disputants part company. The Employees contend that the Carrier's process, operated by other than BRAC covered employees, violates the Collective Agreement by transferring work outside the unit by virtue of generating waybill information as well. Thus their work is eliminated to their detriment. They assert that "... certain revenue and freight information is now included on the Union Camp generated waybills which was previously only recorded by Carrier Employees..."

The Carrier insists that:

- 1) Under the time provisions of Rule C-5 the claim is barred by failure of the employees to file a claim within 60 days of the alleged occurrence.
- 2) The claim is not a "continuing claim" as posited by the Employees.

- 3) The Employees failed to prove a violation of the agreement, relying upon the Scope Rule A-1. They offered no evidence only assertions.
- 4) The CRT method of transmitting information merely changed the manner of performing the same work, clearly not a violation.
- 5) The Employees did not document or prove any damages to which any BRAC covered employee would be entitled.

The initial transmission via CRT took place on March 7, 1978. Claim was filed by the Employee Organization via letter of the General Chairman dated May 29, 1980. The claim called for payment beginning April 7, 1980, over two years after the procedure was started. The Employees assert that their is in the nature of a "continuing violation" relying upon Rule C-5 which states "that a claim may be filed at any time for an alleged continuing violation, however, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof." They cite the 1971 Award of Third Division No. 18539 wherein the Board does not bar a claim filed eleven months after the General Chairman was aware of the action which was in dispute.

However, the Award which dealt with work transferral from dispatchers to telegraphers states "In the case at bar there is no single event which can be classified as the 'date of the occurrence on which the claim or grievance is based.' The practice in question is clearly a continuing one ..., and not barred by the 60 day limitation." In this case at bar there is a clearly distinguished date, March 7, 1978, and therefore Award No. 18539 provides no clear precedent supporting the Employees claim.

The Carrier cites Third Division Award No. 14450. Herein the Carrier abolished a Section Gang on July 21, 1958 and the Employee Organization presented a claim on November 20, 1959 contending that the alleged violation was a continuing one. The Award states, "Recent awards of this Board consistently have held that the essential distinction between a continuing claim and a non-continuing claim that is whether the alleged violation in dispute is repeated on more than one occasion or is a separate and definitive action which occurs on a particular date. (Award Nos. 12045 and 10532) It is undisputed that ... (the action) occurred on or about July 21, 1958. Therefore, we find the Time Limit Rule is applicable..."

The Carrier also contends that the Employees slept on their rights for over two years, an obviously inordinate amount of time and that the doctrine of laches is clearly applicable.

The Board must agree with the Carrier's position on this matter. The Employees were not unaware of the change of methods via CRT on March 7, 1978 and had ample opportunity within the next sixty (60) days to challenge the action on its merit. If the doctrine of laches has any validity surely two (2) years delay in asserting a claim must fall within the parameter of that principle. And the date of March 7, 1978 is distinguishable and unchallenged as the advent of the procedure. Therefore, the subsequent use of the procedure cannot be

called a continuing violation retroactively after allowing the procedure, without contention or interruption, to proceed for two (2) years. The Agreement has not been violated and the Employee aforesaid is not entitled to compensation.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

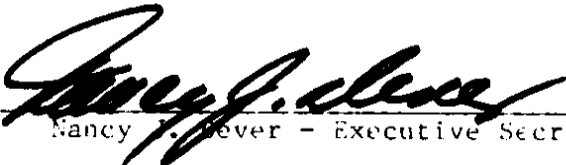
That the Agreement was not violated.

A W A R D

The Claim of the Carrier is upheld.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1985

LABOR MEMBER'S DISSENT TO
AWARD NO. 25497, DOCKET NO. CL-24807
(REFEREE GEORGE V. BOYLE)

The Majority has erred in this instance as the Award is contrary to the established precedence of Third Division Award No. 18539.

For the sake of brevity, we will assert that reasoning of the Dissent offered in Docket No. CL-24808, Award No. 25498, is equally applicable in this instance.

The case law authority on this issue on the property required a sustaining award. The Majority erred in not so finding. We must, therefore, strenuously Dissent to Award No. 25497, and emphasize that Awards out of the norm have no precedential value.


William R. Miller, Labor Member

Date June 18, 1985