

AWARD NO. 13/
Case No. MW-36-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Fort Worth and Denver Railway Company
TO THE) and
DISPUTE) Brotherhood of Maintenance of Way Employes

QUESTIONS
AT ISSUE:

1. What is the meaning and application of the third paragraph of Article V, Moving Expenses and Separation Allowances, of the February 7, 1965 Agreement?
2. Should the separation allowance to which Claimant J. R. Carlton is entitled be computed as follows:

Daily rate (computed from the monthly rate) times 30 (days) times 12 (months)?

OPINION OF BOARD: This is an individual claim for compensation which involves Article V of the Agreement. That is how it was progressed on the property. The parties differ over the amount due Claimant, flowing from the third paragraph of Article V, which refers to Section 9 of the Washington Agreement.

The claim was originally filed on March 22, 1967. It was denied by Carrier at each step, including the letter of Division Engineer T. L. Kanan on June 26, 1967. Timely appeal was not made thereafter. Rule 33(b) of the agreement between the parties provides that "if a disallowed claim or grievance is to be appealed, such appeal must...be taken within 60 days from receipt of notice of disallowance." However, on March 22, 1968, nine months later, the Employes did file an appeal with Carrier's highest officer designated to handle labor relations matters. In view of Rule 33(b), Carrier denied this appeal as untimely as well as on its merits.

The issue of timeliness centers about the provision on page 18 of the Interpretations of November 24, 1965, entitled "Handling of Claims or Grievances." It states that

individual claims for compensation are to be handled in accordance with the rules, but adds, "provided that the time limit on claims involving an interpretation of the Agreement shall not begin to run until 30 days after the interpretation is rendered." That last phrase apparently refers to the Interpretations of November 24, 1965. Thus, where money claims require an interpretation of the Agreement, the time limit does not begin to run until December 24, 1965, 30 days after the parties issued the Interpretations.

This provision could not mean 30 days after any interpretation of the Agreement is rendered by the parties or by the Disputes Committee. For if that were so, one could sit upon his rights for a decade or more, and then seek an interpretation of the agreement pertaining to a money claim, with the time limit beginning to run 30 days thereafter. This would permit the stalest of claims and perhaps many years of retroactive pay. It could mean an end to all expeditious handling of money claims--and to all regular procedures--under the February 7, Agreement, if an interpretation were required to dispose of the claim.

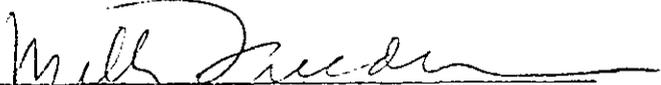
Under the first paragraph of "Handling of Claims or Grievances," time limits and other rules are inapplicable to claims which do not involve compensation but concern only an interpretation of the February Agreement, whereas the basic rules continue to govern claims for compensation. It would be patently absurd to believe that the parties intended time limits on money claims involving an interpretation to run only after a future interpretation is rendered by the Disputes Committee or some other forum. Where an absurd or unrealistic result is obtained from one construction of an ambiguous provision, the construction producing the more reasonable result should be preferred. Practically, there is no reason why a money claim, whether or not it requires an interpretation of the Agreement, should not be filed in accordance with the rules, provided it need not have been filed before December 24, 1965, 30 days after the Interpretations were issued.

Since the sentence on page 18 of the Interpretation is ambiguous, it must be construed in a way which would give the most rational and logical effect to its words.

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Claim dismissed.


Milton Friedman, Neutral Member

Dated: Washington, D. C.
September 10, 1969