

AWARD NO. 325
Case No. CL-56-E (TC)

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Cincinnati Union Terminal Company
TO THE) and
DISPUTE) Transportation-Communication Division, BRAC

QUESTIONS
AT ISSUE:

- (1) Did Carrier violate the February 7, 1965 Mediation Agreement between the parties when it failed and refused to properly compensate the following protected employees: John Youtsey, Howard Quinn and Robert McDonald, commencing June 1, 1969 for all days lost due to Carrier abolishing their positions without an implementing agreement and refusing to compensate them under Article IV of the Agreement?
- (2) Should Carrier now compensate the three protected employees: John Youtsey, Howard Quinn and Robert McDonald at their protected rate, plus all subsequent rate increases, starting June 1, 1969, and until violation is corrected, less compensation paid to claimants for work performed, or due to any loss sustained by voluntary absence due to sickness or disability?

OPINION

OF BOARD: During the proceedings of the Disputes Committee, the Organization stated that only two Claimants should be listed, since John Youtsey had been out ill for the entire period involved.

Carrier contends that the issues submitted here are not reviewable on their merits, since the matter was not timely brought to the Committee. The time-limit rule applicable on the property requires submission to the proper tribunal within nine months after a denial by Carrier's highest

officer. The claims were finally denied in October, 1969, but the matter was not submitted to the Disputes Committee until May, 1972.

It appears that the claims had been submitted to the Third Division, which on March 10, 1972, dismissed them on the ground that the Disputes Committee was the proper forum.

Page 18 of the Interpretations provides that individual claims for compensation under the February 7 Agreement must be handled in accordance with time-limit rules. What the parties did, therefore, was to say that any issue under the February 7 Agreement must be filed within the same time limits as an issue ultimately destined for the Third Division.

The only place to bring a question under the February 7 Agreement is the Disputes Committee, in accordance with Article VII, Section 1. It must be submitted in accordance with the parties' time-limit rules. The parties could have agreed upon any time period they wished within which a matter must be submitted to this Committee. They chose to use the same rules which were in existence for other purposes, and all parties to the February 7 Agreement are therefore bound by them in the handling of issues arising under that Agreement. An intervening filing with some other tribunal does not suspend the time-limit rules for filing with the Disputes Committee.

Previous Awards of the Disputes Committee, including 308, have held that time-limit rules must be observed, and there is no basis upon which either the Interpretations or those Awards should be set aside in this case.

There have been various instances where Organizations have filed claims with both tribunals in order to obviate the possibility of going before the improper tribunal and thereby being barred in the proper forum. In itself, that acknowledges the need for timeliness in the forum which does have jurisdiction over the issue involved. The nine-month rule does not begin to operate after dismissal by the Third Division, but after denial by the Carrier's highest officer. Under those circumstances, it must be held that the claims should be dismissed.

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Claims dismissed.



Milton Friedman
Neutral Member

Dated: October 12, 1972
Washington, D. C.