

NATIONAL RAILWAY LABOR CONFERENCE

1225 CONNECTICUT AVENUE, N.W., WASHINGTON, D. C. 20036/AREA CODE: 202-659-9320

WILLIAM H. DEMPSEY, Chairman

H. E. GREER, Vice Chairman

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J. F. GRIFFIN, Director of Labor Relations

D. P. LEE, General Counsel

T. F. STRUNCK, Administrator of Disputes Committees

May 31, 1974

Mr. Milton Friedman
850 Seventh Avenue
New York, New York 10019

Dr. Murray M. Rohman
Professor of Industrial Relations
Texas Christian University
Fort Worth, Texas 76129

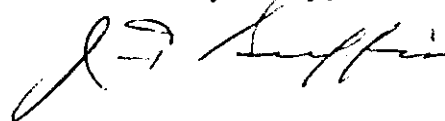
Mr. Nicholas H. Zumas
1990 M Street, N. W.
Washington, D. C. 20036

Gentlemen:

This will supplement our previous letters with which we forwarded to you copies of Awards of Special Board of Adjustment No. 605 established by Article VII of the February 7, 1965 Agreement.

There are attached copies of Award Nos. 378 and 379, inclusive dated May 30, 1974 rendered by Special Board of Adjustment No. 605.

Yours very truly,



cc. Chairman, Employees National Conference Committee (10)

C. J. Chamberlain (2)

C. L. Dennis (2)

M. B. Frye (2)

W. W. Altus (2)

H. C. Crotty (2)

✓ J. J. Berta (2)

R. W. Smith (2)

R. K. Quinn, Jr. (3)

W. F. Euker

T. F. Strunck

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Pennsylvania-Reading Seashore Lines
TO THE) and
DISPUTE) Brotherhood of Railroad Signalmen

STATEMENT
OF CLAIM:

- (a) Claim that the Company violated Article 1, Section 4 of the Agreement of February 7, 1965, when it failed to notify the employees of the Pennsylvania-Reading Seashore Lines, C. & S. Department, that it was suspending operations and positions thereby causing these employees to report for work at their respective starting time and headquarters, only to be advised there was no work on Monday, July 17, 1967, account of violations cited in claim (a).
- (b) Claim that each and every one of the employees listed below be paid eight (8) hours at the straight time rate of their respective positions for July 17, 1967, account of violations cited in the claim (a) above:

M. F. Walsh, Inspector	J. T. McAviney, Mtr. Test
R. L. Danley, Inspector	A. O. Postoll, Mtr. Cum.
G. C. Thompson, Foreman	A. L. Hansel, Leading Signalman
W. E. Coho, Foreman	H. E. McNemar, Signalman
H. D. Kendall, Mtr.	W. M. Posey, Signalman
R. P. Schwartz, Mtr.	N. DeLuca, Signalman
W. G. Gifford, Mtr.	R. J. Sigmund, Signalman
R. B. Inman, Mtr.	W. Hyndman, Signalman
E. S. Reed, Mtr.	C. A. Giordano, Signalman
D. G. Jordan, Mtr.	T. F. Seher, Signalman
S. J. Rice, Mtr.	D. B. Thwaites, Signalman
J. P. Shelton, Mtr.	J. J. Bogan, Signalman
R. K. Maynard, Mtr.	

R. W. McCormick, Mtr.	E. F. Senior, Elec. Mtr.
C. S. Hoffman, Mtr.	L. A. Santora, Helper
T. N. Allen, Mtr.	J. J. Essl, Helper
R. L. Connelly, Mtr.	N. O. Rose, Helper
D. L. Palbo, Helper	V. J. Passalacqua, Helper
J. D. Ashton, Helper	W. H. Gilbert, Atc., In-
C. A. Saca, Helper	spector

Includes all that had not been on vacation that day.

OPINION

OF BOARD: On August 18, 1967, a claim was filed by the Local Chairman, seeking eight-hours' pay for a number of employees who allegedly never received proper notification not to report due to a strike by another organization. Claim was denied on September 7 and appealed on September 9. On November 6, 1967, Carrier's General Manager denied the appeal.

In accordance with the parties' Agreement of December 1, 1951, concerning the procedures for handling disputes, a joint submission by the General Manager and the Local Chairman was to be prepared. It was to include a joint statement of fact and the positions of each side. Following preparation of this document, the question is to be taken up at a meeting of the General Manager and the General Chairman.

Accordingly, the Local Chairman on November 12 requested the preparation of such a statement. On February 5, 1968, the General Manager replied with its proposal. The letter stated, in part:

If the proposed Facts are satisfactory,
kindly so advise and send us your Position.
We shall then complete the Joint Submission.

Year after year thereafter passed without a word from the Organization. Then, on December 8, 1972, a new Local Chairman wrote to Carrier stating that "I hereby re-state and re-submit our claim dated August 18, 1967." Carrier replied on January 29, 1973, not only denying the claim on its merits, but

also noting:

In view of the lapse of time between February 5, 1968, the date of the General Manager's letter to Local Chairman Nack furnishing the proposed "Joint Statement of Agreed-Upon Facts" and December 12, 1972, the date of your letter referred to above, it is apparent that this claim has long since been abandoned and cannot now properly be progressed.

Correspondence ensued thereafter, the Organization's letter of February 9, 1973, stating that it did not agree "that this is an abandoned claim." Ultimately the parties drafted a joint submission on June 27, 1973. Both Carrier's stated position in the submission and its letter maintained that the claim had been abandoned and could not be progressed. The Organization's statement of position made no reference to this point, and offered no explanation why Carrier might be in error in its view.

Carrier acted with "reasonable promptness" in preparing a proposed joint statement of fact on February 5, 1968. The Organization did not. Silence prevailed. A delay of five years, which involved not only a failure to participate in preparing a submission but even in acknowledging Carrier's, is an inexplicable, unwarranted and unjustifiable course of conduct under the December 1, 1951 Agreement on grievance-handling procedures.

There could be only one legitimate defense which could withstand Carrier's abandonment argument: evidence of a mutual agreement to defer processing the claim for such an inordinate length of time. And in its submission to this Committee, the Organization for the first time referred to a letter from the General Manager to the General Chairman dated December 13, 1967, which allegedly stated:

The Joint Submission in this case has not been completed. We suggest meeting the schedule after completion of the Joint Submission and that decision be extended sixty (60) days from date claims were discussed in accordance with the provisions of Article V of the August 21, 1954, Agreement.

According to the Organization, this extended the time limits indefinitely and made its resubmission of the claim proper at any time. Carrier asserted it had no record of such a letter. During the Committee's consideration of the case, the Organization offered to supply it.

However, the place to have submitted the letter and the argument was on the property, where it could have been dealt with properly. Instead, no reference to it ever was made there. Why the Organization failed to mention the existence of an alleged waiver of time limits, even during the protracted handling of the claim from December 8, 1972, to August 13, 1973, is unknown. In any event, as other Awards of this Board, including No. 239 and No. 365, have held, the Disputes Committee is not the locus for evidence offered for the first time to resolve factual conflicts that could have been resolved on the property.

Even if the statements attributed to Carrier were to be credited in toto, it does not justify the Organization's posture. The absence of a terminal date for the joint submission in the December 13, 1967, letter would not have meant that there was an in-perpetuity waiver of time limits. It would be altogether illogical to assume that Carrier intended to give the Organization the right to raise the issue a year or five years or twenty years later, when its economic situation could not have been foretold and when first-hand essential evidence might no longer be obtainable. The latter is especially true considering that the parties had not yet agreed upon a joint statement of fact.

The rule of reason dictates that Carrier at best was postponing a meeting on the subject until --in the normally near

AWARD NO. 378
Case No. SG-36-E

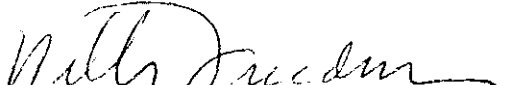
future-- the routine of arriving at a joint submission was completed. Carrier's reasonably prompt draft of such a submission, less than two months after the alleged December 13 letter, supports this view. It belies the Organization's argument that no matter what Carrier did, the Organization need do nothing for years thereafter, while still retaining its right to proceed.

Moreover, even under the letter upon which the Organization relies, there is no suggestion that preparation of the joint submission is to be delayed. It simply noted that it had not yet been completed and suggested that the required meeting be scheduled once the joint submissions were finished. The Organization's quotation from the General Manager's letter of December 13, 1967, does not indicate that the joint submission was to be completed whenever the Organization decided to do so, even if it ran into many years.

Finally, the very words used by the Organization in its letter of December 8, 1972, in which it resubmitted the claim, establishes that the August 18, 1967, claim had been allowed to expire, rather than that its processing was now merely resuming in accordance with a mutually agreeable deferment of time limits. Thus, by any logical standard, this claim was long since abandoned and cannot be revived by unilateral action.

AWARD

Claim denied.


Milton Friedman
Neutral Member

Dated: Washington, D.C.
May 30, 1974

