

Award No. 226
Case No. TCU-42-E

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) The Ann Arbor Railroad Company
TO THE) and
DISPUTE) Transportation-Communication Employees Union

QUESTIONS
AT ISSUE:

1. With respect to the application of Article IV, Section 6, is the Carrier required to furnish the Organization with list of protected employees together with the compensation guaranteed to each such listed employee computed as set forth in Article IV, Section 1 or 2?
2. If the answer to (1) above is in the affirmative, may Carrier, because of failure to furnish such list when requested, later sustain a position that the Organization violated Time Limit Rules even though the Organization presented Claims for compensation under Article IV within the specified time limit computed from the time the requested information was received from the Carrier?
3. If the answer to (2) above is in the negative, shall Carrier be required to compensate G. P. Honold, extra purser, in accordance with Section 2 of Article IV for the months April and November, 1965; February, June, July, August, September, October, November, December, 1966; and January, 1967?

OPINION
OF BOARD:

Article IV, Section 6, provides as follows:

The carrier and the organization signatory hereto will exchange such data and

information as are necessary and appropriate to effectuate the purposes of this Agreement.

On December 30, 1965, the Organization requested lists "indicating the status of employees coming within the Telegraphers' Agreements, showing whether the employees compensation is guaranteed under Section 1 or Section 2 of Article IV and the normal rate of compensation of the position held on October 1, 1964, or the base period months, earnings and hours." Carrier replied that there was no contractual requirement for compensation information in connection with all employees, pursuant to Page 15 of the Interpretations, but attached a list of employees protected under Section 1. Apparently by inadvertence, a list of pursers covered by separate agreement with the Organization was not submitted at that time.

In February, 1967, such a list was requested by the Organization and it was expeditiously submitted. Subsequently, Claimant, a protected employee entitled to preservation of compensation under Article IV, Section 2, filed the claim extending back to April, 1965. Carrier considered the claim untimely and reimbursed Claimant only for the monies due within the sixty-day period preceding the claim. The Organization contends that compensation is due for the eleven months specified between April, 1965, and January, 1967, which were denied by Carrier.

There is no doubt that the claim was not filed in accordance with the time limits which, according to the Interpretations, are applicable to individual claims for compensation. The question is whether Carrier's failure to provide the information requested by the Organization in December, 1965, justified the delay in filing until after the information was produced. The Organization cites Award 98, although in that case the delay in filing the claim was held not to bar it because "the Employees had sought unsuccessfully from September, 1965, on to obtain from Carrier information about Mr. Barton's status. It was not until November 16, 1966, that the information which led to the claim was made available to the Employees."

In this case no effort was made to obtain the list of pursers for more than a year. When it was specifically requested, it was promptly supplied. There is no doubt that Carrier was derelict in its obligation to supply the list as required by Article IV, Section 6, and Question No. 2 on Page 15 of the Interpretations. However, Carrier's dereliction does not overcome the failure to comply with the time limits, particularly where no effort was made by the Organization to obtain the information it alleges was necessary. Since Carrier was not complying with its obligations, the Organization was obliged to act, not sit back and wait indefinitely. In all cases of contract violations by a carrier, time-limit rules are applicable, barring special circumstances as in Award No. 98.

According to Carrier, "furnishing of a list is not an essential prerequisite in the filing of a claim." Carrier adds that "most claims involving the February 7th Agreement are filed without first receiving a list." Nothing in the record indicates that there was, in fact, any basis for the Organization's contention that the filing of this claim necessitated waiting upon the list that Carrier furnished. But if it did, then the information should have been sought promptly. Carrier's error does not mean that time limits were expunged and a claim could be filed years later.

A W A R D

1. The answer to Question No. 1 is that Carrier is required to furnish a list of protected employees but is not required to furnish information on guaranteed compensation except "in individual cases as they arise."
2. The Carrier may sustain a position that the Organization violated time-limit rules even though the claim for compensation was filed within the specified time limit computed from the time the requested information was received.

Award No. 226
Case No. TCU-42-E

3. The answer to Question No. 3 is No.



Milton Friedman
Neutral Member

Washington, D. C.
November 16, 1970

copy to JEB 12/2/70