

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) Burlington Northern Inc.
TO THE) and
DISPUTE) TC Division - BRAC

QUESTIONS

- AT ISSUE: (1) To avoid loss of protection or any part thereof under Article IV, were F. R. Gully, A. J. Sundeen and A. W. Dixon, whose positions were abolished and who were unable to obtain a position which did not require a change in residence (within 30 miles), required to obtain the highest rated position available to them requiring a change in residence (more than 30 miles)?
- (2) If the answer to the above question is in the affirmative, shall Carrier be required to compensate F. R. Gully, A. J. Sundeen and A. W. Dixon all preservation (guarantee) of compensation due to each of them under the terms of Article IV?

OPINION

OF BOARD: These claims were filed with the Disputes Committee by letter of August 14, 1970. The history of the claims on the property includes letters in November, 1968, from the General Chairman to Carrier's highest officer and a response dated December 1, 1968, which stated, in part:

These claims are being investigated by this office. Until such investigation is completed, the claims are declined.

Subsequently, Carrier's officer denied each of the claims on their merits in letters respectively of February 20, February 27 and March 14, 1969. On March 26, the General Chairman responded, restating his position and requesting "your

reconsideration and advice." During the first week of April in separate letters Carrier reiterated its denial of the claims. There was no further handling on the property.

According to Carrier, the claims must be dismissed since the Organization has not complied with the time-limit rules; it referred the issue to this Committee far later than nine months after the highest officer had originally denied them. The Organization raises two defenses. One is that Carrier itself did not act timely in its denial on the property, and the other is that, in any event, since these are continuing claims they may be decided, although retroactivity would be limited.

The December 1, 1968, denial was not in accordance with the time-limit rules. It did not, as required, provide "the reasons for such disallowance," but merely referred to an investigation. The subsequent letters of Carrier did meet the requirements for a denial with reasons, although they were sent after the expiration of the mandatory 60-day period. However, the Organization accepted the untimely answers without protest, as it had a right to do. It thereafter continued the discussions on the property by requesting Carrier to reconsider its position, without making any reference to the improper denial. The Organization filed its submission with the Disputes Committee 16 months after Carrier's final denial on the property.

At no time did the Organization on the property raise the question of the timeliness of Carrier's answer. Hence, when it filed its submission, the Organization was obliged to comply with the rules' nine-month requirement. Carrier, on the other hand, has raised its objection to this untimely filing at its earliest opportunity--when it made its reply to the Organization's submission.

Carrier's objection to the Organization's belated filing gives the latter no right now to raise a question about the preceding steps on the property. That is where the entire issue should have been resolved if, in fact, the Organization had not accepted Carrier's delay in effectively denying the claims.

These are continuing claims. Does that mean that the Organization may therefore now obtain a ruling on their merits from the Committee? An original filing of a claim may take place at any time after the Carrier has first acted in a continuing situation. Under Article V, Section 3, of the August 21, 1954 National Agreement, retroactivity would then

be granted for no more than 60 days.

However, if the subsequent handling of a claim by the Organization has been defective, there is no provision in the rules making this applicable to the retroactivity aspect of a continuing claim. For the claims themselves, as originally filed, must be dismissed, if the time limits were exceeded and Carrier did not waive its right to timely processing. This leaves nothing for the Committee to consider, since nothing is then properly before it.


Article V, Section 1(c) of the National Agreement states:

All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division... (Underlining added.)

These claims are therefore barred and cannot be revived. Many Awards of the Third Division have dealt with the very issue and have reached the same conclusion (17030, 15757, etc.).

A W A R D

Claims dismissed.


Milton Friedman
Neutral Member

Dated: July **26**, 1972
Washington, D. C.