Award No. 353
Case No. H&RE-20-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES TO DISPUTE ) Hotel and Restaurant Employees and Bartenders International Union

and

Chicago and North Western Transportation Company

QUESTIONS AT ISSUE:

(1) Whether or not the Carrier can require protected employees to take jobs outside of their class and craft for which they hold no rights or seniority?

(2) Shall the Carrier compensate protected employees, who have refused to take such assignments, for all monies due under the provisions of the February 7, 1965 Agreement?

(3) Shall the Carrier compensate employees who have been forced to take jobs outside of their craft and class, for monies they should have received under the provisions of the February 7, 1965 Agreement?

OPINION OF BOARD: Carrier asserts initially that the claims submitted are barred by the Time Limit Rule as set forth in the August 21, 1954 National Agreement. (Rule 36 of the schedule agreement.)

The Board finds that the claims are barred. The Organization contends that following the February 4, 1970 denial by Carrier, there were conferences (initiated by Carrier) that led the Organization representatives to believe that the denial was a "conditional denial." The Organization takes the position that: "If the Carrier wants to stand on its declination and, nine months later, invoke time limit rules as a basis for barring any further progression of the claims, it has a duty not to mislead the Union by further conferences and discussions of those claims; it must stand on its denial and refuse further discussion in order to make the Union aware that time, under the time limit rule, is running."

With respect to the matter of further conferences after the declination, the Board refers to Opinion in Third Division Award No. 17977 stating in part as follows:

> "This Board has consistently held that where precise time limits exist they must be compiled [sic] with unless waived by the parties; but, neither an invitation to discuss a pending nor the actual discussion, in and of themselves, can be interpreted as time limit

extension agreements. (Awards 13942, 12417, 11777, 11597, 10347, among others.)"

Unless, therefore, there is a showing in the record that there was fraud or bad faith on the part of Carrier, conferences after the declination do not toll the running of the time limit. There has been no such showing in this dispute.

The Organization further contends that since there has been no interpretation as to the question of whether Carrier can require employes to take jobs outside of their class or craft, the time limit within which to file a claim is 30 days after the interpretation is rendered. (Interpretations, p. 18.)

This Board has ruled on this contention in Award No. 131, stating:

> "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.
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> "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."

With respect to Claimant Cain, the Organization contends that his claim is not barred because he had been submitting individual claims each month from November 1969 to August 1972.

Claimant Cain's position was abolished on November 1, 1969. He refused to accept comparable employment. On November 24, 1969 the Organization submitted claims on behalf of a number of employes including Claimant Cain. These claims were denied by Carrier on December 18, 1969. On January 20, 1970 the Organization appealed the decision to Carrier's highest designated officer who denied the claims on February 4, 1970. On April 3, 1972 Carrier was notified that the Organization had submitted the claims, including Claimant Cain's, to this Board.

The question is whether the continued monthly filing of the same claim by Claimant Cain extended the ninth month requirement under the Time Limit Rule (Rule 36 of the schedule agreement and the August 21, 1954 National Agreement.) The Board finds that it did not.

Numerous awards of the various divisions of the National Railroad Adjustment Board have considered and interpreted Time Limit rules with uniform conclusion: Once a claim is filed, whether a continuing claim or not, proceedings must be instituted within nine months after the claim is denied by Carrier's highest designated officer. Otherwise the Board is without jurisdiction to consider the substantive issues of the claim.

AWARD

The substantive Questions at Issue are barred from consideration for the reasons set forth in the Opinion.

Nicholas H. Zumas
Neutral Member

Dated: Washington, D. C.
April 18, 1973