

Public Law Board No. 1187

Parties to
Dispute:

Maine Central Railroad Company
Portland Terminal Company

and

Brotherhood of Locomotive Engineers

State^{of} Issue:

Shall the claims filed by the Organization on March 18, 1971, in behalf of E. H. Stevenson, on February 8 and March 25, 1971, in behalf of R. D. Lowe, Jr., on May 17, 1971, in behalf of C. W. McLain and on October 28, 1971, in behalf of E. S. Carter, Jr., be docketed for adjudication by Public Law Board No. 1187?

Findings:

The issue mentioned above has been presented for determination to this Board, meeting with a duly appointed Procedural Neutral.

Contrary to the Organization's position it is Carrier's contention that four of the claims, all of which are time claims are barred by Article 41 (c) of the Engineers Agreement, while the fifth, which stems from a discipline case involving E. S. Carter, Jr., must be dismissed under Article 18 Section 5 of that Agreement.

Article 41 (c) prescribes that "all claims or grievances involved in a decision of the highest officer shall be barred unless within six months from the date of said officer's decision, proceedings are instituted by the employee or his

duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

Each of the four time claims in question was denied by Carrier's highest grievance officer's letter of October 1, 1971. The only response to that letter according to the record, received by Carrier during the six month period immediately following October 1, 1971, was General Chairman Currier's letter of November 28, 1971; it contains the following statement:

"Please be advised that your decision is not acceptable and the claim further appealed in accordance with the current Engineers' Agreement and the Railway Labor Act as amended."

The critical question is whether the language just quoted satisfies Article 41 (c)'s requirement that proceedings must be instituted before "a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved."

No Public Law Board having jurisdiction over the claims in question was in existence at the time the claim were filed or within the six month limitation period. There accordingly was no way in which the organization could institute the claim before a Public Law Board before the six months expired.

Under the circumstances, we are satisfied that it is not necessary that a Public Law Board be established within the prescribed six months in order to comply with the terms of Article 41 (c). A contrary interpretation would be unrealistic

and could well result in restricting the use of Public Law Boards, a result that does not appear to have been contemplated by any applicable legislation or agreement. We will not presume that the parties intended in Article 41 (c) to impose a condition in the processing of grievances that is incapable of performance in many instances.

We therefore would have overruled Carrier's time limit objection, even though proceedings had not actually been instituted before a Public Law Board within the six month period, if the Organization had at least requested within that time that a Public Law Board be established to consider the five claims in dispute. Once such a request were made, the burden would be on Carrier to cooperate in setting up the Board and avoiding unreasonable delay in that regard.

General Chairman Currier's letter of November 28, 1971, did not satisfy that requirement, however, by any reasonable interpretation. That the Organization was aware of the proper procedure to be followed in setting up a Board is attested to by the fact that on June 23, 1972, Mr. Currier did send Carrier a letter requesting that a Board be established pursuant to Public Law 89-556 for adjudication of the five cases. This request was untimely, however, since it was not mailed until well after the six month period prescribed by Article 41 (c) had expired.

The merits of time limit provisions are not before us for consideration. When, as here, the parties have committed themselves to such a provision, it must be strictly

and evenly enforced and we are not at liberty to modify its terms or distort plain language in order to avoid its impact. There is no question but that the vague language used in Mr. Currier's letter of November 21, 1971, does not constitute compliance with Article 41 (c) and that a contrary ruling would enable the parties to delay proceedings and ignore the realistic meaning of that Rule.

In the light of these considerations, we conclude that the four time claims must be dismissed. We are persuaded that this decision is correct, although we recognize that a contrary result was reached in an Award of Public Law Board No. 774 issued on October 28, 1971, where a statement in a general chairman's letter to Erie Lackawanna's highest grievance officer that "as your denial is not acceptable, we are therefore requesting the handling of this claim before a tribunal having jurisdiction pursuant to law or agreement" was held to be sufficient to toll a similarly worded time limitation rule. The language is somewhat more specific than that used in Mr. Currier's letter of November 21, 1971, but even if the two letters were found to be substantially similar, this Board is satisfied that its conclusions are sound for the reasons mentioned in the foregoing discussion.

The fifth case listed by the organization involves a claim for reinstatement of E. S. Carter to a January 8, 1947, seniority date. Carter had been discharged for a Rule G violation and rehired on February 12, 1969, as a "brand new" employee. While any question regarding seniority must be

determined on its merits, the issue before us is a procedural one involving a time limit objection.

Article 18 Section 5, the time limit rule for discipline cases, reads as follows:

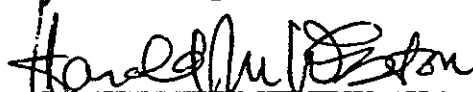
"The Statute of Limitations governing all cases taken up with management by the General Chairman of Engineers shall be six months from date of investigation."

Carter was deprived of seniority on March 17, 1966, and no claim was made for the January 8, 1947, seniority date until February 18, 1971, well over five years subsequent to the date of investigation. The fact that a different labor organization was Carter's bargaining representative prior to that time does not alter the fact that Article 18 Section 5 has not been complied with in this situation. Both parties have committed themselves to that provision and its terms are definite and unambiguous and require that the fifth claim be dismissed.

Award:

The five claims in question have not been timely progressed and are barred by the time limitations of the applicable Agreement. They will not therefore be docketed for adjudication by Public Law Board No. 1187.

Adopted at *Portland, Maine* on March *26*, 1974.



Harold M. Weston, Chairman

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J. E. Hamilton
J. E. Hamilton,
Carrier Member

J. P. Carberry
J. P. Carberry,
Labor Member