

PUBLIC LAW BOARD NO. 836

Parties: United Transportation Union
and
Norfolk and Western Railway Company

Question at Issue: "Did the Organization's request dated December 8, 1970, to establish a Public Law Board comply with the requirements of the 'Time Limit on Claims Rule' as contained in the current UTU-E Schedule Agreement?"

Discussion: The chronology of events pertaining to this procedural dispute is as follows:

January 23, 1970 - The time claim giving rise to this dispute was initially filed.

February 3, 1970 - Carrier's Road Foreman of Engines initially declined the claim.

March 2, 1970 - Employees rejected Road Foreman of Engine's declination of claim. On the same date Employees appealed to Superintendent.

March 4, 1970 - Superintendent rejected Employees' appeal.

May 4, 1970 - Employees appealed to Vice President and General Manager of the Carrier.

June 1, 1970 - Vice President and General Manager declined appeal.

June 5, 1970 - Employees rejected Vice President and General Manager's declination.

June 18, 1970 - Conference held between Organization and Vice President and General Manager.

June 22, 1970 - Vice President and General Manager reaffirmed his initial denial of appeal of the claim.

June 25, 1970 - Organization notified the Carrier that its decision was not acceptable.

December 8, 1970 - The General Chairman of the Organization wrote the Carrier's Vice President - Personnel:

"This is to advise that United Transportation Union - E, desires to establish a Special Board of Adjustment under the Railway Labor Act as amended by Public Law 89-456. The United Transportation Union - E proposes the enclosed Agreement to be entered into for the establishment of this special adjustment board (Public Law Board).

The disputes to be resolved by the Public Law Board are listed on Attachment 'A,' appended to the proposed Agreement."

Attachment "A" contained a list of 93 claims cited both by Carrier and Organization file numbers.

December 15, 1970 - The Vice President - Personnel wrote to the General Chairman stating:

"Please refer to your letter of December 8, 1970, File G-390, concerning your desire to establish a Special Board of Adjustment under the Railway Labor Act as amended by Public Law Board 89-456.

We are agreeable to meeting with you on January 7, 1971, at 9:30 AM, in this office to discuss the claims listed in your letter. However, it must be understood that agreement must be reached as to the establishment of the board as specified in Public Law 89-456, and also as to the specific cases which will be submitted to such board."

December 18, 1970 - The General Chairman replied to Carrier's Vice President - Personnel as follows:

"Referring to your letter dated December 15, 1970, File F&E - MISC - 70 - 10 wherein you set January 7, 1971, 9:30 AM, as conference date and time to discuss the claims listed in our letter of December 8, 1970.

Please be advised that the time and date is satisfactory to me."

January 7, 1971 - Conference was held between Carrier and Organization representatives. The Carrier informed the General Chairman that it was agreeable to using the same agreement which the parties had utilized for establishing an earlier public law board. The General Chairman informed the Carrier that he would have to transmit the form of the proposal agreement to the Grand Lodge in Cleveland for approval.

In the course of this conference the Carrier officers noted that the claim in issue along with other claims had been declined in June 1970 by the highest officer of the Carrier and consequently these claims were "dead" under the Schedule Rule pertaining to Time Limit on Claims.

The Organization took issue with the Carrier's position, contending that its December 8, 1970, letter stopped the running of the time limits. The parties were not able to agree regarding this procedural issue.

February 3, 1971 - The General Chairman notified Carrier that the Grand Lodge had approved the proposed agreement for establishing the Public Law Board.

February 8, 1971 - Parties reached agreement as to which cases should be submitted to the public law board. It was further agreed that the instant claim should be submitted to a procedural neutral for determination as to whether it had been handled properly under the Schedule Agreement's Time-Limit-on-Claims Rule.

February 23, 1971 - The parties, by joint letter to the National Mediation Board, requested the undersigned be certified as the procedural neutral.

December 7, 1971 - The National Mediation Board certified the undersigned as the Procedural Neutral Member of this public law board.

The Time Limit on claims Rule in issue in this case states
in part:

"(c) The procedure outlined in paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision by the highest officer designated to handle claims and grievances shall be final and binding unless within sixty days after written notice of the decision of said officer he is notified in writing that his decision is not accepted. 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...."

The respective positions of the Parties are:

Organization

The Organization states that there was no undue delay by either party, and that since it had filed its Notice on December 8, 1970, for the establishment of a Public Law Board together with a list of the unresolved claims, a special board of adjustment was established under Public Law 89-456. It adds that when it proceeded in this manner it had satisfied the contractual time limits because it had filed the claims with a tribunal having jurisdiction to hear the claims. The Organization also states that when the Carrier replied on December 15, 1970, to its December 8, 1970, Letter, stating that:

"it will join in an Agreement establishing such
a Board"

it was conceding that the Organization had instituted timely proceedings within the Time Limit on Claims Rule. The Organization also states that it did not request an extension of the time limits on the claims because it was not necessary in view of its timely request for the establishment of a public

law board, which stopped the running of the contractual time limits.

The Organization states that the Awards of Public Law Board No. 64, Public Law Board No. 251 and Public Law Board No. 274 have sustained the Organization's position on this time limit question.

The Organization notes that the Carrier did not schedule a conference on the pending claims until January 7, 1971, which was after the six month period had passed, although it could have scheduled a conference earlier within the prescribed six-month period.

The Organization also states that while many claims are listed for hearing before public law boards, the records will show that the vast majority of these claims are settled or withdrawn from the dockets of these public law boards, so that this Organization has processed only 33 cases since 1967 before public law boards, or an average of eight cases a year. The Organization denies that it has filed excessive number of claims before public law boards, and it adds that if the Carrier would not deny valid claims at the initial claim conference, there would be even less claims filed before public law boards.

Carrier

The Carrier denies that the Organization's Letter of December 8, 1970, advising of its desire to establish a public law board acted to stop the running of the contractual time limits on claims. It states that this action by the Organization is only one part of what is required to stop the running of time limits. The Carrier discusses and analyzes the criteria for stopping the running of time limits set forth in Award of Public Law Board No. 64, and states that these criteria were not met by the Organization in the

instant case. The Carrier states that its Letter dated December 15, 1970, made it clear that it was not agreeing to the establishment of the public law board until both the form of the agreement and the specific cases to be submitted were agreed upon. This agreement was not reached until after the six month period had passed.

The Carrier notes that it was within its rights in scheduling the January 7, 1971, conference as it was within the 30-day period prescribed by the Railway Labor Act. The Organization was not able to announce until February 3, 1971, that the Grand Lodge had approved the form of the Agreement.

The Carrier stresses that the same General Chairman when seeking to establish a special board of adjustment on this property on February 10, 1970, wrote to the Carrier requesting a 30-day extension "as provided for in the last sentence of Paragraph (c) of the Time Limit on Claims Rule." The Carrier adds that in view of the fact that the Organization found it necessary to request an extension of time in one Board to stop the running of time limits, it is difficult to understand its position in this case.

The Carrier states that Congress did not intend to destroy the Time Limit on Claims Rule by enacting P. L. 89-456, or to allow either party unduly to delay the handling of claims or grievances by this newly enacted legislation. The Congressional purpose in passing the aforesaid legislation was to remove the backlog of cases and provide an expeditious means for handling future cases. The Carrier observes that the Organization had six months to progress the claims following the final Carrier declination but it did not do so. Instead the Organization waited until the sixth month to request a public law board in order to stay the running of the time limit rule. To

permit the Organization to do so is giving it a blank check to prolong or delay proceedings indefinitely.

The Carrier states that since the middle of 1967 when public law boards became operative the UTU has submitted 1603 claims for public law board consideration, or an average in excess of 300 cases per year. The Organization is abusing the intent of the law establishing public law boards and now the Organization is attempting to use the Law as a means for destroying the Time Limit on Claims Rule.

Findings: The Board, upon the whole record and all the evidence, finds that the employees and Carrier are Employees and Carrier within the meaning of the Railway Labor Act, as amended; that the Board has jurisdiction over the dispute, and that the parties to the dispute were given due notice of the hearing thereon.

The Board finds that the Organization's action in this case in seeking to establish a public law board under P. L. 89-456 was sufficient to halt the running of the contractual time limits on the pending claim. The record shows that the Organization timely served the Carrier on December 8, 1970, a proposed Agreement, which form agreement both parties had utilized in the past in establishing other public law boards, and which Agreement was subsequently agreed to by the parties for the creation of the instant public law board. This Agreement also had appended to it a list of clearly identified claims. In light of this evidence of record, the Board must conclude that the Organization's December 8, 1970, Letter put the Carrier on timely notice that the Organization was going to process the denied claims to final and binding adjudication before a competent tribunal. This was sufficient to stop

the running of the time limit on claims rule.

It must be observed that the cardinal difference which P. L. 89-456 introduced into grievance adjudication in the railroad industry was the non-consensual element in establishing machinery for the final and binding adjudication of claims and grievances. Once the Organization, in good faith, took the measures which it did herein, the Carrier's consent or lack thereof could not stay the establishment of a public law board under the statute. The Organization, after it initiated the steps which it did, could proceed further to request the National Mediation Board to designate the Carrier Board Member, as well as the Neutral Member. If the Carrier protested any procedural aspect of the Board's operations, the Organization could move unilaterally to have the statutory machinery invoked to settle any procedural disputes. The Congress, in enacting P. L. 89-456, apparently did not intend that agreement by both parties in interest be a necessary element or essential component in executing the statutory scheme envisioned by the said legislation, and once the statutory machinery was invoked, the time limit on claim rule was stayed.

This Board finds lacking in merit the Carrier's contention that the promiscuous establishment of public law boards violates not only the time limit on claims rule but also undermines the Congressional intent to expedite the disposition of existing backlogs of cases. For example, in the instant case, once the Organization has initiated the steps for establishing this public law board, the Carrier has the authority to have a referee appointed and then to request to this referee that he move with dispatch to hear and decide the docketed claims. The Organization is not free any longer, after establishing a public law board, listing certain claims, to then sit back and do nothing more,

but nevertheless, having stopped the running of the time limit rule. The Organization has established machinery which the Carrier may put to good use, if it is so inclined or disposed, to achieve its objectives. The Organization has established machinery which, if properly and effectively utilized, could also diminish and reduce, rather than increase, the backlog of existing claims.

It is because of the above stated Findings that this Board cannot sustain the Carrier's position in this case.

ANSWER: The Organization's request dated December 8, 1970, to establish a Public Law Board, did comply with the requirements of the "Time Limits on Claims Rule" as contained in the current UTU-E Schedule Agreement.

Jacob Seldenberg

Jacob Seldenberg, Procedural Neutral

J. R. Lugo

J. R. Lugo, Employee Member

T. W. Alley

T. W. Alley, Employer Member

March 21, 1972