

The First Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Locomotive Engineers
(National Railroad Passenger Corporation (Amtrak))

STATEMENT OF CLAIM:

"Payment of retroactive wage increases under Article I of the June 2, 1988 agreement to engine service employees whose employment relationship with the carrier was broken between August 1, 1985 and June 2, 1988."

FINDINGS:

The First Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The Organization contends that Carrier improperly excluded certain engineers from entitlement to retroactive wage adjustments provided in the June 2, 1988 Agreement. It argues that engineers who were not in the service of the Carrier on the date of the Agreement are, by the "inherent ... structure and language of the Agreement," entitled to backpay based on the retroactive wage schedule established by the Agreement. The Carrier contends that engineers who severed their employment relationship prior to June 2, 1988, other than those who retired or died, are not entitled to retroactive wage adjustments. The Carrier also stresses that the Claim before the Board is defective on two procedural grounds, it seeks compensation for some unidentified individuals and it was appealed off the property well after the one year time limit for perfecting such appeals expired.

The Board finds the Carrier's contentions on timeliness persuasive. On August 12, 1988, the Organization placed the issue of retroactive wage adjustments for individuals not in active service before the Carrier's Assistant Vice President - Labor Relations. This letter was responded to on August 18, 1988 by the Director Labor Relations. Another exchange occurred between the General Chairman and the Director on August 24, 1988 and October 31, 1988. On October 17, 1989, the General Chairman (citing Rule 20, paragraph h) asked that the matter be listed for submission to SBA No. 928. On November 22, 1988, the Carrier prepared a joint letter for the parties seeking to have the NMB formally list the case with SBA 928. It is apparent that the parties were unable to come to terms on the precise issue to be placed before SBA 928 and the matter was never docketed with that Board. On August 15, 1990, the General Chairman filed a Notice of Intent with this Board, seeking to have the matter adjudicated here.

Rule 20 h reads:

"The decision of the highest officer of the Corporation designated to handle claims will be final and binding unless, within six months after the date of that decision, the officer is notified in writing that his decision is not accepted. In the event of such notification, the claim will become invalid unless, within one year from the date of the Corporation's decision, the claims are disposed of on the property or submitted to a tribunal having jurisdiction pursuant to law or agreement, unless the parties mutually agree to other proceedings for final disposition of said claim."

The August 15, 1990, Notice of Intent was clearly beyond one year beyond the date of the Carrier's October 17, 1988 decision letter in this matter. As such it was out of time by the explicit language of Rule 20 h and the claim must be considered as "invalid" as required by the language of the Rule. The matter will be dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of First Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 24th day of March 1992.