

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 20289
Docket Number CL-20314

Joseph A. Sickles, Referee

(Brotherhood of Railway, Airline and Steamship
(Clerks, Freight Handlers, Express and
(Station **Employees**

PARTIES TO DISPUTE: (

(George P. Baker, Richard C. Bond **and Jervis**
(**Langdon, Jr., Trustees** of the Property of
(Penn Central Transportation Company, Debtor

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood
(CL-7331) that:

(a) The Carrier violated the Rules Agreement, effective February 1, 1968, particularly Rule 7-B-1, when claim dated March 31, 1969, submitted by L. D. Weller, Furloughed Clerk, Chesapeake Division, Eastern Region, was not denied or allowed.

(b) L. D. Weller be restored to service and be allowed the benefits claimed. (Docket 2627)

OPINION OF BOARD: **Claimant urges** a violation of Rule 7-B-1 because Carrier neither denied **nor** allowed his March 31, 1969 claim.

There is considerable controversy between the parties concerning the timeliness **and** validity of the claim, the facts which **control** the dispute and the Carrier's obligation to respond. While **we** recognize the vary serious nature of the question of time **limits** in prosecuting claims and grievances, we feel that this docket must be disposed of on jurisdictional grounds.

The March 31, 1969 Notice of Claim, which is quite expertly **drawn,** initially sets forth certain factual allegations. and then states:

"**On** February 1, 1968 the New York Central Railroad Co. was consolidated into the Pennsylvania Railroad Co.; and the Pennsylvania Railroad Co. as the surviving **corpe** oration simultaneously changed its name to the **Pennsyl- vania -** New York Central Transportation Co. Shortly thereafter (claimant is informed and believes it to **have** been during the month of February 1968) the Pennsylvania - New York Central Transportation Co. in violation of Section 5(2)(f) of the Interstate **Commerce** Act; Sections **1(a)** and **1(b)** of the Agreement for Protection of Em- ployees in Event of Merger of Pennsylvania and New York Central Railroads; and parts IV, V, VI and/or **X** of the

"**Implementing** Agreement failed to continue the employment relationship of this claimant. This action on the part of the carrier was to this claimant's detriment.

Wherefore, the foregoing premises considered, claimant seeks appropriate relief **under** Section 9 of the Washington Job Protection Agreement of 1936."

Not only does Claimant fail to cite any alleged violation of the Rules Agreement; he directly and specifically requests relief under Section 9 of the Washington Job Protection Agreement.

Of course, this Board has no jurisdiction to consider an alleged violation of the Interstate **Commerce** Act. Regarding asserted violations of the Merger Agreement and implementing agreements, with a request for relief **under** the Washington Job Protection Agreement, **we** note that Section 13 of said Agreement states:

"Section 13. In the event that **any** dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the **carriers** and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this **agreement** may **name** such persons from time to time as each party desires to **serve** on such **Committee** as its representatives in substitution for such original **members**. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is unable to **agree** within 10 days upon the selection of said referee, then the **members** on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the **Committee** and the referee and the decision of the referee shall be final and conclusive. The salary and expenses of the referee shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them."

The Board has recently reaffirmed that when an Agreement contains specific provision for resolution of disputes by an Arbitration **Committee**, this Board will not inject itself into the matter. See Awards 19926 and 19950. See also Awards 17639, 16869 and 14471.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds **and** holds:

That the parties waived oral hearing;

That the Carrier and the **Employes** involved in this dispute are respectively Carrier and **Employes** within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Board lacks jurisdiction over this dispute.

A W A R D

Claim dismissed for lack of jurisdiction.

NATIONAL RAILROAD **ADJUSTMENT** BOARD
By Order of Third Division

ATTEST:


Executive Secretary

Dated at Chicago, Illinois, *this* 14th day of June 1974.

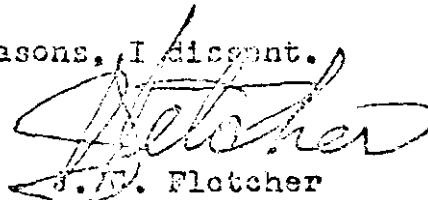
LABOR MEMBER'S DISSENT TO AWARD 20289 (DOCKET CL-20314)
(Referee Sickles)

The sole issue to be decided in this dispute was whether or not Carrier violated Article V of the August 21, 1954 Agreement. All of the following Awards have held that Carrier cannot prejudge the claim and refuse to handle it in accordance with the Agreement provisions:

<u>Award</u>	<u>Referee</u>
9760	Raymond E. LaDriere
10138	J. Harvey Daly
10500	Levi H. Hall
11174	David Dolnick
12233	Nathan Englestein
12472	Joseph S. Kane
12473	Joseph S. Kane
12474	Joseph S. Kane
14759	Gene T. Ritter
16564	John H. Dorsey
19799	Frederick R. Blackwell

Not having responded to the Claim, Carrier defaulted under the time limit provisions of Article V, and the Claim should have been allowed "as presented". Section 13 of the Washington Job Protection Agreement was secondary under the circumstances and, therefore, should not have been given weight in the disposition of the matter.

For the above reasons, I dissent.


J.W. Fletcher
Labor Member
7/1/74

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO
AWARD NO. 20289 - (DOCKET NO. CL-20314) - REFEREE SICKLES

The labor member's dissent covers the **same** argument used in panel discussion.


The Neutral in Award No. 20289 stated:

"Not only does **Claimant** fail to cite any **alleged** violation of the Rules Agreement; he directly and **specificially** requests **relief** under Section 9 of the Washington Job Protection Agreement."

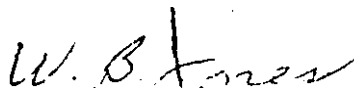
The Neutral, in Avarid **No.** 20289, correctly found that the claim should be dismissed for lack of jurisdiction inasmuch as the Washington Job Protection Agreement contains specific provision for resolution of disputes by a committee designated under Section 13 thereof.



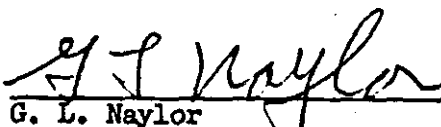
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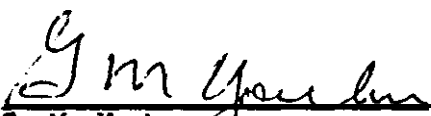
P. C. Carter



W. B. Jones



G. L. Naylor



G. M. Youhn