

Award No. 1098

Docket No. 1094

NATIONAL RAILROAD ADJUSTMENT BOARD

FOURTH DIVISION

The Fourth Division consisted of the regular members and in addition Referee Clint G. Livingston when award was rendered.

PARTIES TO DISPUTE:

RAILROAD YARDMASTERS OF AMERICA

**THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim and request of the Railroad Yardmasters of America that—

Charles J. Brady be allowed the difference between the vacation pay allowed him at clerk's rate in 1954 and the regular yardmaster rate of pay for eighteen (18) vacation days earned under the yardmaster agreement by service as yardmaster during the year 1953.

EMPLOYEES' STATEMENT OF FACTS: Claimant Charles J. Brady was a regular assigned yardmaster during 1953 and that part of 1954 up to March 20, 1954 and had rendered more than fifteen years of consecutive service with the carrier as of that time.

After having been displaced from his regular assignment as yardmaster due to reduction in force as of March 20, 1954, and having returned to a clerical assignment, he was allowed a vacation of fifteen days (3 weeks) at clerk's rate of pay in 1954.

POSITION OF EMPLOYEES: The handling of this dispute on the property is evidenced by the following correspondence—

Letterhead of

RAILROAD YARDMASTERS OF AMERICA

LACKAWANNA LOCAL LODGE NO. 44

"August 9, 1954

**Mr. W. G. Dorsey, Supt.
Lackawanna Railroad
Scranton, Pa.**

Dear Sir:

I am in receipt of letter from yardmaster Mr. Chas. Brady, Kingston, Pa., who advises his request for vacation as yardmaster was refused, and said letter from your office instructed Mr. Sheerin to the effect that Mr. Brady would be entitled to a clerks vacation.

Mr. Brady worked as yardmaster all thru 1953 and until March 20, 1954. He, thereby, earned and qualified for a yardmasters vacation. We have had similar cases. The yardmasters vacation was granted without question.

Will you please reconsider and give Mr. Brady the vacation he is rightfully entitled to?

Thanking you for past consideration,

Very truly yours

/s/ J. W. Gavin
Gen. Chairman."

* * * * *

Letterhead of

LACKAWANNA

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD
COMPANY

Scranton 3, Pa.

OFFICE OF SUPERINTENDENT

August 23, 1954

1031
1106

Mr. J. W. Gavin,
General Chairman, Railroad Yardmasters of America,
913 Luzerne St. Scranton, Pa.

Dear Mr. Gavin:

Your letter of August 9th in connection with vacation for former Yardmaster Charles Brady, at Kingston, for the year 1954.

In view of the fact that Section 5 of the Yardmasters' current Agreement specifically refers to regularly assigned yardmasters, and Mr. Brady not being a regular assigned yardmaster, cannot consistently grant him a vacation under the Yardmasters' Agreement.

You will recall a similar question came up in 1946 concerning the same Mr. Brady's vacation, and would refer you to letter you received from Mr. P. M. Shoemaker, under date of July 20, 1946, in which he advised you that inasmuch as Mr. Brady has exercised his seniority on the Clerical Roster he accepted all the conditions under our agreement with the Clerical Organization. The same applies in the instant case, as Mr. Brady has placed himself on a clerical position and is obliged to take the conditions of the Clerical Agreement, which provides that employes will be paid while on vacation the daily compensation paid by the Carrier for such assignment.

Yours truly,

/s/ W. G. Dorsey"

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Letterhead of
RAILROAD YARDMASTERS OF AMERICA
LACKAWANNA LOCAL LODGE, NO. 44

September 17, 1954

"File 1031-1106
Mr. W. G. Dorsey, Sup't.
Lackawanna Railroad
Scranton, Pa.

Dear Sir:

Referring to your letter of August 23, 1954, regarding a yardmaster's vacation for Mr. Chas. Brady at Kingston, Pa. You referred to a decision I received from Mr. P. M. Shoemaker under date of July 20, 1946, in which he advised that in as much as Mr. Brady has exercised his seniority on the clerical roster he accepted all the conditions under our agreement with the clerical organization. You state the same applies in this case. To this I cannot agree.

There has been many changes, revisions and even a supreme court ruling, regarding vacations.

Yardmaster Mr. A. T. Hughes was demoted to the status of a clerk. Worked under the clerks agreement and was allowed a yardmasters vacation, which he rightfully earned. Letter to verify was mailed July 16, File 013 from Mr. Bimson to Mr. R. B. Parkhurst, Sec't. Fourth Division N.R.A.B., Chicago.

Yardmaster Mr. P. A. Lavelle at Scranton, now working under clerks agreement also received a yardmasters vacation.

Is it not a fact a clerk is required to render service for 130 days in preceding year to qualify for a vacation under clerks agreement? I think you will agree Mr. Brady is also entitled to yardmasters vacation. I therefore, request you reconsider your decision. I am sure it was not your intention to discriminate against Mr. Brady.

Very truly yours,

/s/ J. W. Gavin
Gen. Chairman"

Letterhead of
LACKAWANNA
The Delaware, Lackawanna and Western Railroad Company
Scranton 3, Pa.

Office of Superintendent

W. G. Dorsey
Superintendent
1031

"November 30, 1954

Mr. J. W. Gavin,
General Chairman,
Railroad Yardmasters of America,
913 Luzerne St.,
Scranton, Pa.

Dear Mr. Gavin:

Your letter of September 17th, with reference to mine of August 23, 1954 in connection with a yardmaster's vacation for Charles Brady, Kingston, Pa.

Rule 5—Vacations—of the Yardmasters' Agreement pertains to regularly assigned yardmasters and inasmuch as Mr. Brady was not a regularly assigned yardmaster at the time it would not be in accordance with the agreement to grant him a yardmaster's vacation.

Mr. Shoemaker in his letter to you of July 20, 1946 fully outlined the status of an employe who exercises his seniority under the Clerks Agreement and we see no reason to change that position in the present case. Must decline request, as presented, for yardmaster's vacation for Mr. Brady.

Yours truly,

/s/ W. G. Dorsey"

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Letterhead of

RAILROAD YARDMASTERS OF AMERICA

Lackawanna Local Lodge No. 44

"December 3, 1954

Mr. A. M. Bimson, Ass't. Gen. Mgr. Personnel
Lackawanna Railroad
Hoboken, N. J.

Dear Sir:

On September 17, 1954 I wrote Mr. W. G. Dorsey regarding a yardmasters vacation for Mr. Chas. Brady at Kingston, Pa. Mr. Brady worked as yardmaster thru 1953, thereby, earning and qualifying for a yardmaster vacation.

Mr. Brady's yardmaster position was abolished in 1954. He is working as clerk and extra yardmaster. Mr. Dorsey has declined the request. Quoting Rule 5 of yardmasters agreement Mr. Dorsey claims Agreement pertains to regularly assigned yardmasters and inasmuch as Mr. Brady was not regularly assigned at the time it would not be in accordance with the agreement to grant him a yardmasters vacation.

I fail to see how Mr. Brady is entitled to other than a yardmasters vacation. He did not qualify as a clerk. Mr. Dorsey quoted a letter from Mr. Shoemaker of July 20, 1946. Agreements have been revised and vacations increased since 1946.

Will you please correct and grant Mr. Brady the yardmaster vacation which he earned and deserves. We also have a couple of yardmasters at Scranton in same difficulty.

Very truly yours,

/s/ J. W. Gavin, Gen. Chariman"

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LACKAWANNA

The Delaware, Lackawanna and Western Railroad Company
Hoboken, N. J.

A. M. Bimson
Asst. General Manager-Personnel

"December 15, 1954

File 013
Mr. J. W. Gavin, Gen. Chmn.,
Railroad Yardmasters of America
913 Luzerne Street
Scranton, Pa.

Dear Mr. Gavin:

Referring to your letter of December 3, 1954 concerning vacation for Charles Brady at Kingston, Pa.

The Ruling made by Mr. Shoemaker in his letter of July 20, 1946 to you fully outlined the status of an employe who exercises his seniority under the Clerks' Agreement insofar as vacations are concerned.

Very truly yours,

/s/ A. M. Bimson"

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Letterhead of

RAILROAD YARDMASTERS OF AMERICA

Lackawanna Local Lodge No. 44

"January 22, 1955

Mr. F. Diegtel
Ass't. Gen. Manager
Lackawanna Railroad
140 Cedar St.
New York, N. Y.

Dear Sir:

I am in receipt of letter of January 5, 1955 from Mr. W. G. White, Vice President Operation advising, effective January 1, 1955 Mr. F. Diegtel, Assistant General Manager, is designated as the Lackawanna's Chief Operating Officer and representative for the purpose of handling with representatives of the Railroad Yardmasters of America all matters growing out of grievances or interpretation or application of agreements concerning rates of pay, rules or working conditions including cases pending and unadjusted on the effective date specified above.

The Yardmasters have the following cases on file, which were previously handled by Mr. A. M. Bimson:

File 013 regarding vacation allowance.

File 013 RY 16 regarding abolition of yardmaster position at Hampton Yard.

File 013 RY 15 regarding abolition of three yardmasters at Scranton.

Mr. Bimson has denied claims 13 and 16, claim 15 still under investigation. Claim 013 regards yardmaster Chas. Brady at Kingston. However, yardmasters Mr. Edward Kane and Mr. P. Lavelle and John Dunn are in the same category.

Therefore, the yardmasters committee will appreciate an opportunity to meet with you and further discuss above mentioned claims if you will kindly set a time and date at your convenience.

Very truly yours,

/s/ J. W. Gavin
Gen. Chairman

cc: Mr. M. G. Schoch
Mr. J. H. Sullivan
Mr. T. L. Morgan"

Letterhead of
LACKAWANNA

The Delaware, Lackawanna and Western Railroad Company
140 Cedar Street
New York 6, N. Y.

Fred Diegtel
Asst. General Manager

"February 1, 1955

File 013—RYA
Mr. J. W. Gavin, General Chairman
Railroad Yardmasters of America
913 Luzerne Street
Scranton, Pa.

Dear Mr. Gavin:

Replying to your letter January 22 requesting conference in which you are to discuss files 13, 15 and 16:

I will try to set a mutually convenient date in the near future at which we can further discuss these matters.

Very truly yours,

/s/ F. Diegtel"

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Letterhead of
LACKAWANNA

The Delaware, Lackawanna and Western Railroad Company
140 Cedar Street
New York 6, N. Y.

Fred Diegtel
Assistant General Manager

"March 18, 1955

File 013—RY-15
RY-16
RY-17

Mr. J. W. Gavin, General Chairman
Railroad Yardmasters of America
913 Luzerne Street
Scranton, Pa.

Dear Mr. Gavin:

Referring to your letter of January 22, 1955, advising that the following cases on file were previously handled with Mr. A. M. Bimson:

File 013—RY-15, regarding abolition of three yardmasters at Scranton. Denied by Mr. Bimson—August 25, 1954.

File 013—RY-16, regarding abolition of yardmaster position at Hampton Yard. Denied by Mr. Bimson—December 28, 1954.

File 013—RY-17, regarding vacation allowance for Charles J. Brady.

It had been my intention to meet with you before this date, however, previous commitments made it impossible to do so.

In order that we may not run into any violation of Article 5 of the agreement of August 12, 1954, with regard to Claim RY-17, wish to advise that my investigation develops no merit to claim for vacation as yardmaster as Mr. Brady was not a regularly assigned yardmaster in 1954. Under the circumstances, claim is denied.

Very truly yours,

/s/ F. Diegtel"

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LETTERHEAD OF
RAILROAD YARDMASTERS of AMERICA
LACKAWANNA LOCAL LODGE, No. 44

"March 22, 1955

Mr. F. Diegtel
Assistant General Manager
Lackawanna Railroad
140 Cedar Street
New York, N. Y.

Dear Sir:

In answer to your letter of March 18, 1955 referring to yardmaster cases:

File 013—Ry-15, regarding abolition of three yardmasters at Scranton. Denied by Mr. Bimson—August 25, 1954.

My last correspondence in File 013-RY-15 was October 1, 1954, at which time Mr. Bimson stated—'Referring to your letter of September 17, 1954 regarding claim for three yardmasters at Scranton, Pa. whose positions were abolished June 17, 1954. The various statements made by you in letter referred to above have been noted and will be investigated.'

Because of this statement I held file open and wrote you accordingly January 22, 1955. This being your final decision please be advised I am turning the files in cases File-013-RY-15 regarding abolition of three yardmasters at Scranton, Pa. File 013-RY-16, regarding abolition of yardmaster position at Hampton Yard and File-013-RY-ly, regarding vacation allowance for Charles J. Brady, over to Grand Lodge for further handling.

I wish also to advise the vacation claim involves more yardmasters than Mr. Brady. Yardmasters Mr. Edw. Kane, Mr. William Sweeney and Mr. P. Lavelle earned yardmasters vacations in previous year, but were denied similar to Mr. Brady. After claim was entered Mr. Sweeney was granted a full yardmaster vacation. This being a discriminatory move there is no reason why yardmasters Mr. Brady, Mr. Kane and Mr. Lavelle should not be accorded the same consideration.

Very truly yours,

/s/ J. W. Gavin,
J. W. Gavin, Gen. Chairman

cc: Mr. M. G. Schoch
Mr. J. H. Sullivan
Mr. Paul Beltz
Mr. J. Humphrey"

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Letterhead of
RAILROAD YARDMASTERS of AMERICA

Lackawanna Local Lodge, No. 44

"March 31, 1955

Mr. F. Diegtel,
Assistant General Manager,
Lackawanna Railroad,
140 Cedar Street,
New York, N. Y.

Dear Sir:

In answer to your letter of March 28, 1955 and previous correspondence regarding vacation allowance for Chas. J. Brady, File 013-RY-17. You state the claim in favor of Mr. Brady was subject of my letter of December 3, 1954, also while I made mention of the fact that Messrs. Kane, Lavelle and Dunn were in the same category as yardmaster Brady in my letter of January 22, 1955.

You further state it was not understood that I was presenting claims in favor of these men. To further clarify the matter original claim was presented in favor of Mr. Brady who was refused a yardmasters vacation, while at the same time Messrs. Kane, Lavelle and Dunn were receiving yardmasters vacation.

In fact Mr. Kane entered claim under date of February 10, 1955 for three day's pay as yardmaster and two days difference between clerks rate and yardmasters rate. I understand Mr. Lavelle and Mr. Dunn both received 10 days at yardmasters rate and 5 days at clerks rate.

I am unable to find any agreement or ruling which governs part yardmaster and part clerks vacation. Mr. Wm. Sweeney also claimed a yardmaster vacation and on taking same up with Superintendent at Scranton was allowed. The other yardmasters mentioned are entitled to same and, as advised, the claims were forwarded to Grand Lodge.

I think you will agree we will have to be consistent. Altho Mr. Brady was the only yardmaster refused a yardmaster vacation it was the assumption the other yardmasters who were enjoying yardmaster vacations as in other years, would continue yardmaster vacation and not receive a cut on the five remaining days.

I hope I have made this clear. Copy of letter attached to Mr. O'Connor may be of interest.

Very truly yours,

/s/ J. W. Gavin,
J. W. Gavin, General Chairman."

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Letterhead of
RAILROAD YARDMASTERS of AMERICA

537 South Dearborn Street
Chicago 5, Illinois
Tel. Wabash 2-0954

M. G. Schoch
President

W. F. Meyer
Secy-Treas.

"July 28, 1955
Your File: 013-RY-17

Mr. F. Diegtel, Assistant General Manager,
The Delaware, Lackawanna and Western RR Co.,
140 Cedar Street,
New York, New York.

Dear Sir:

I am very sorry that because of the press of other work, and frankly thru some inadvertence, I have been slow to write to you, as I have intended to do, about the claim that has been handled by General Chairman Gavin, first with your predecessor Mr. Bimson and later with you regarding vacation allowance for Charles J. Brady last referred to in your letter to Mr. Gavin under date of March 18, 1955 and in Mr. Gavin's answer to you under date of March 22, 1955:

I think the claim is so obviously proper and justified that, frankly, I am surprised that it has been necessary to give it the handling that it has received: it happens that we have been forced by a number of railroads to prosecute to the Fourth Division of the National Railroad Adjustment Board quite a number of vacation claims which, I am glad to say, have been quite generally sustained and so far as the Brady claim is concerned, the rules governing and the circumstances involved, Mr. Brady having qualified for a 'Yardmaster's vacation' by service as a Yardmaster he is entitled to compensation for that vacation time at the appropriate Yardmaster rate. As a number of Awards have stated, the compensation allowed a Yardmaster on account of vacation is, in effect, compensation for service theretofore performed and such service having been Yardmaster service the only proper compensation is compensation at the appropriate Yardmaster rate.

Accordingly, I trust that you will now see your way clear to allow the claim as presented by General Chairman Gavin. Certainly it ought not be necessary for our organization to take this claim to the Adjustment Board.

Very truly yours,

/s/ M. G. Schoch,
M. G. Schoch, President

mgs-aw

cc: Mr. J. W. Gavin, General Chairman

LACKAWANNA

The Delaware, Lackawanna and Western Railroad Company

140 Cedar Street New York 6, N. Y.

Fred Diegtel
Assistant General Manager

File 013-RY-17

"August 2, 1955

Mr. M. G. Schoch, President,
Railroad Yardmasters of America,
537 South Dearborn St.,
Chicago 5, Ill.

Dear Sir:

This will acknowledge your letter of July 28, 1955 concerning a vacation allowance for Charles J. Brady for the year 1954.

The facts in this case indicate Charles J. Brady was granted 15 days vacation during the year 1954 at the clerk's rate of pay. This was done because at the time Mr. Brady was assigned a vacation he was working as a clerk and the Vacation Agreement for Non-operating Employees effective with the calendar year 1954 granted each employe covered by that agreement a vacation of fifteen (15) consecutive work days with pay, provided they had rendered fifteen (15) or more years consecutive service.

We understand that General Chairman Gavin of the Yardmasters' Committee is taking the position in this case that because Mr. Brady, having worked two hundred and eighty (280) days as a yardmaster in 1953, and having a seniority date on the Yardmasters' Roster of November 24, 1924, that he would be entitled to an annual vacation of three (3) weeks with pay under Article III of the Agreement of August 12, 1954, between the Eastern, Western and Southeastern Carrier's Conference Committees and employes represented by the Railroad Yardmasters of America, however, Mr. Gavin has apparently completely overlooked the fact that Mr. Brady was not covered by the August 12, 1954 agreement at the time he was granted a vacation in 1954.

Rule V of the agreement between this Company and the Railroad Yardmasters of America is specific and reads:

'Regularly assigned yardmasters, after one year's service, will be qualified for an annual vacation of thirteen (13) working days with pay, or in lieu thereof, if during the preceding calendar year the employe renders compensated service of not less than one hundred sixty (160) days. This rule will become effective January 1, 1948.'

It is the position of this Carrier that Charles J. Brady was not a regularly assigned yardmaster in 1954 when granted a vacation, but was working under an agreement between this Company and the Brotherhood of Railway and Steamship Clerks, etc.

It can be readily seen from the above that Mr. Brady would not be entitled to a vacation in the year 1954 under any agreement

with the Railroad Yardmasters of America and, therefore, I cannot change my position in this case.

Very truly yours,

/s/ F. Diegtel

cc: Mr. John W. Gavin, General Chairman
Railroad Yardmasters of America
913 Luzerne St.
Scranton, Pa."

* * * * *

It is the position of the employes that in accordance with the principle established by Fourth Division Award No. 439 and confirmed by subsequent Awards, a vacation qualified for becomes part of a yardmasters earned compensation. Claimant Brady qualified for a vacation at yardmaster rate of pay by reason of his service as yardmaster during 1953 under Rule V of the yardmasters agreement, and he further qualified for the third week vacation at yardmaster's rate under Article III of the National Agreement of August 12, 1954 by reason of his 15 years of continuous service with the carrier.

It is self-evident that claimant could not have actually qualified for a clerk's vacation in 1954 by reason of his service as yardmaster in 1953 yet carrier allowed him a clerk's vacation. It is likewise self-evident that the yardmasters agreement makes no provision for a partial vacation for a former regular assigned yardmaster yet the record shows that carrier allowed Yardmasters Lavelle and Dunn a partial vacation of 10 days at yardmaster's rate and a partial vacation of 5 days at clerks rate.

The record also shows that the carrier allowed Yardmaster William Sweeney a full vacation at yardmaster's rate in circumstances identical to those in this dispute.

All data used in support of this claim has been presented to the carrier and made a part of the particular question in dispute.

The claim should be allowed.

CARRIER'S STATEMENT OF FACTS: Article V(c) of the agreement of August 12, 1954 between the participating carriers represented by the Eastern, Western and Southeastern Carriers' Conference Committees and employes represented by the Railroad Yardmasters of America in part reads:

"* * * All claims and grievances involved in a decision by the highest officer shall be barred unless within six (6) months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board, or a system or regional board of adjustment that has been agreed to by the parties heretofore as provided in Section 3-(2nd) of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular extend the six (6) months' Period herein referred to."

The instant claim was denied by the highest officer, F. Diegtel, Assistant General Manager, on March 18, 1955. The claim was not progressed to the National Railroad Adjustment Board, Fourth Division, until October 28, 1955, a period of seven months and ten days from the date claim was declined by the Carrier's highest officer.

The Carrier's payroll record shows Charles J. Brady was paid for vacation as follows:

October 11, 12, 13, 14, 15, 1954 — 5 days.

December 6, 7, 8, 9, 10, 1954 — 5 days.

December 13, 14, 15, 16, 17, 1954— 5 days.

Charles J. Brady was granted the fifteen day vacation as shown above at the clerk's rate of pay. This was done because all the time Mr. Brady was assigned and took his vacation he was working as a yard clerk at Kingston Yard—hours 9 A. M. to 5 P. M. The Vacation Agreement for non-operating employes effective with the calendar year 1954 granted to each employe covered by the Clerks Agreement a vacation of fifteen (15) consecutive working days with pay, provided they had more than fifteen (15) or more years of consecutive service.

POSITION OF CARRIER: The Carrier asserts that the Railroad Yardmasters of America failed to comply with Article V(c) of the National Agreement signed at Chicago, Illinois, on the 12th day of August, 1954, as shown in Carrier's Statement of Facts. This claim was denied by Assistant General Manager F. Diegtel in letter dated March 18, 1955, addressed to John Gavin, General Chairman. A copy of Mr. Diegtel's letter to Mr. Gavin dated March 18, 1955 is attached and marked for identification as Exhibit No. 1. Also attached is letter dated October 28, 1955, addressed to the National Railroad Adjustment Board, Fourth Division, by M. G. Schoch, President, Railroad Yardmasters of America and identified as Exhibit No. 2. For non-compliance with Article 5(c) of the August 12, 1954 Agreement the claim is barred. Without waiving the defense that the claim is time barred, the Carrier asserts it is without merit.

Rule 5 of the agreement between this Company and the Railroad Yardmasters of America effective July 1, 1947, is specific and reads:

"Regularly assigned yardmasters, after one (1) year's service will be qualified for an annual vacation of thirteen (13) working days with pay, or in lieu thereof if during the preceding calendar year, the employe renders compensated service of not less than one hundred and sixty (160) days. This rule will become effective January 1, 1948."

It is the position of the Carrier that Charles J. Brady was not a regularly assigned yardmaster in 1954 when granted a vacation, but was working under an agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

The Carrier's records show in the year 1953 Mr. Brady worked twenty-one days as a clerk and two hundred and eighty days as a yardmaster and at the time he was assigned a vacation he was working as a regularly assigned yardmaster and paid while on vacation the sum of \$218.82.

During the year 1954 Charles J. Brady worked one hundred fourteen days as a yardmaster and one hundred and fifty days as a clerk. At the time he was granted a vacation, he was working in a clerical position (yard clerk, Kingston Yard) and was paid while on vacation fifteen days at the clerical rate of \$224.34. The Carrier asserts that Article III of the agreement of August 12, 1954 amended Rule V of the agreement between the Carrier and the Railroad Yardmasters of America dated July 1, 1947 only to the extent that it increased the number of vacation days for a regularly assigned yardmaster from thirteen working days to three (3) weeks, providing such employe had fifteen (15) or more years of continuous service. The fact remains that the claimant, Charles J. Brady was not in the category of a regularly assigned yardmaster when granted a vacation in 1954.

Article 7 — Vacation Agreement of December 17, 1941, reads:

“Allowance for each day for which an employe is entitled to a vacation with pay will be calculated upon the following basis:

(a) An employe having a regular assignment will be paid while on vacation the daily compensation paid by the Carrier for such assignment. * * *”

Mr. Brady was paid his vacation allowance strictly in accordance with the provisions of Article 7(a) quoted above.

The employes have failed to produce any evidence that Charles J. Brady was a regularly assigned yardmaster when granted a vacation in 1954. The Carrier has definitely shown that Mr. Brady was working in the capacity of a Clerk prior to and subsequent to the time he took his vacation and under the rules of the agreement between the Carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes effective January 1, 1939.

There is no rule in the agreement with the Yardmasters of America on this property which makes any provision for paying men who have qualified for a vacation while working as a yardmaster at the rate of pay of a yardmaster when granted a vacation while working as a clerk, or in any other capacity. There being no such rule, your Board is without authority to read into the Agreement something which is not there. The Carrier is not obliged to point to any rule that permits the action taken in this case. The burden is upon the claimant to show that it is entitled to prevail under an agreement rule that is susceptible to no other interpretation. (Award 15119—First Division).

Although the burden is not on the Carrier it has shown that the claim is time-barred and even if it were not, it has no merit and should be denied.

The Carrier denies each and every allegation of the Organization and the validity of every argument advanced by it at variance with the Carrier's position and pleading in this case.

All data in support of the Carrier's position in this case have been handled on the property.

Oral hearing is desired.

(Exhibits are not reproduced).

OPINION OF BOARD: Claimant Charles J. Brady was a regular assigned yardmaster during 1953 and that part of 1954 up to March 20, 1954. After having been displaced from his regular assignment as yardmaster due to reduction in force as of March 20, 1954, and, having returned to a clerical assignment, he was allowed a vacation of fifteen days (three weeks) at clerk's rate of pay in 1954.

He claims he should be allowed the difference between the vacation pay allowed him at clerk's rate and the regular yardmaster's rate of pay for eighteen vacation days earned under the yardmasters' agreement by service as yardmaster during the year 1953.

The first and, we feel, most important question confronting this Board is whether or not this Board has jurisdiction over the instant dispute.

Rule V(c) of the Agreement between the parties is as follows:

“* * * All claims or grievances involved in a decision by the highest officer shall be barred unless within 6 months from the

date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system * * *."

The record reveals correspondence between Organization and Carrier, beginning on the 9th day of August, 1954, with Mr. J. W. Gavin, General Chairman for the Railroad Yardmasters of America, Lackawanna Local Lodge No. 44, handling the Organization's case, and that on the 18th day of March, 1955, Mr. Fred Diegtel, Assistant General Manager of Carrier, in a letter of the same date to Mr. Gavin flatly denied the claim in question and specifically set forth the fact, last paragraph of said letter, and we quote, "In order that we may not run into any violation of Article 5 of the agreement * * *".

Article V in its entirety deals only with claims or grievances. Carrier not only did not in any sense waive the statute of limitations, but specifically pleaded it by calling Organization's attention to the same.

Proceedings were not instituted by employe or his duly authorized representative, in compliance with Article V(c) of the Agreement, from the decision of the highest officer before the appropriate division of the National Railroad Adjustment Board within six months. In fact the record reveals that the "notice of intent" was not filed until the 28th day of October, 1955, seven months and ten days after the denial of the claim by the Assistant General Manager.

In answer to the letter of the 18th day of March, 1955, from Mr. Diegtel to Mr. Gavin, Mr. Gavin said and we quote, "This being your final decision * * *". Said answer was dated as of March 22, 1955, four days after the denial of the claim by the Assistant General Manager.

Then on the 28th day of July, 1955, Mr. M. G. Schoch, President of the Railroad Yardmasters of America, stated in his letter to Mr. Diegtel, "and frankly thru some inadvertence, I have been slow to write you * * *".

On the 20th day of March, 1956, when this case was orally heard before this Board, in answer to a direct question from the Referee, Mr. Gavin admitted that he understood and acknowledged that the letter of March 18, 1955, denying the claim was notice to him that the claim was denied as of then, and that the decision was final by the Assistant General Manager.

As this Board understands it, the reason for rules such as Rule V of the Agreement is that all claims and grievances that come up must be processed and settled in a given manner with the idea of finishing the same to a conclusion as quickly and expeditiously as possible and within certain time limits. The time limit is for the purpose of guaranteeing speed and deterring laxity.

Here there is no question but that laxity did occur and the time limit had expired before the cause was duly presented to this Board.

No matter how meritorious the claim may be, this Board has no alternative but to dismiss the claim for want of jurisdiction for failure to present the claim before the six months period had elapsed.

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

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

1098—15

The parties to said dispute were given due notice of hearing thereon.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of FOURTH DIVISION

ATTEST: R. B. Parkhurst
Secretary

Dated at Chicago, Illinois, this 18th day of April, 1956.