

PUBLIC LAW BOARD 5389

Award No. 1
Case No. 1

PARTIES TO DISPUTE

BUFFALO AND PITTSBURGH
RAILROAD, INC.

- and -

UNITED TRANSPORTATION UNION
(YARDMASTERS)

STATEMENT OF THE CLAIM

Claim and request that regular clerk (Storekeeper) R. P. Dobson be paid one day's pay at the Storekeepers' punitive rate of pay for five days per week Monday through Friday commencing October 1, 1992, account of a Carrier Officer performing Storekeeper's work on the first shift at Butler, Pennsylvania. This is in violation of the schedule agreement Article 1A 2, Side Letter of Understanding dated January 1, 1992, concerning Article 1A, Article 10F and now with the untimely declination of the appeal Article 21A,B and C.

OPINION OF THE BOARD

On October 5, 1992 the claim in this case was submitted to the General Agent, who declined it on October 16, 1992. On October 26, 1992 the Organization appealed the matter to the General Manager-South. The Return Receipt showed that the Certified Mail appeal was received on October 29, 1992.

The General Manager responded "...to your letter dated October 26, 1992..." on December 7, 1992 and denied the claim. The denial was not received until December 14, 1992, but on December 8, 1992

the Organization advised:

...the Carrier has not responded to the appeal of this claim and is now in violation of the time limits as prescribed in the schedule agreement Article 21. This claim was needed to be responded to by November 27, 1992, and no response has yet been received...

On December 11, 1992 the Carrier replied:

...there is no specified time limit for Carrier's second response to an Appeal and Carrier has no liability for payment per your suggestion.

The Carrier states, in its Submission to this Board:

This Article states that the appeal declination from Mr. Ross, the highest designated officer, was not bound by a 30-day response time limit.

Article 21, A. requires that all claims or grievances must be presented to the designated officer within thirty (30) calendar days. Should a claim or grievance be disallowed, the Company shall, within thirty (30) calendar days from the date it is presented, notify the employee or representative of the reason(s) for the disallowance.

Article 21 B advises that an appeal to a disallowance must be taken to the highest designated officer within thirty (30) calendar days from receipt of the disallowance.

Article 21 C states:

The procedure outlined in Paragraphs A. and B. pertaining to appeal by the employee **and decision by the Company** shall govern in appeals taken to each succeeding officer except in cases of appeal **from** the decision of the highest officer designated by the Company to handle such disputes. All claims or 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 employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment...

The Carrier did not comply with the time limitation mandates of the agreement. In short, we do not agree with the Carrier's on-property or Submission statement that "...there is no specified time for Carrier's second response..." or that the "...appeal declination from..., the highest designated officer, was not bound by a 30-day response time limit."

Unquestionably, Article 21, A and B impose thirty (30) day time limitations upon the Organization for presentation, and appeal to the highest designated officer. Article 21 A requires the Company to disallow within thirty (30) days. In order to continue the grievance or claim, the Organization must appeal to the highest designated officer. To be sure, Article 21 B, per se, does not state a time period for disallowance by that Carrier official, but, Article 21 C clearly states that the procedure outlined in the two preceding paragraphs pertaining to **decision by the Company** "...shall govern in appeals to each succeeding officer..." The only exception deals with the six (6) month limitation on an appeal to the NRAB or a Board of Adjustment from the decision of the highest officer. There is no exception stated on a time limitation of the decision of the highest officer. Thus, the only permissible construction of Article 21, A, B and C requires the highest officer to disallow in the same manner as in Article 21 A concerning the

initial disallowance, i.e. thirty (30) calendar days from the date it is presented to him.

Article 21 specifies that the result of a failure to notify is:

...the claim or grievance shall be considered valid and settled accordingly, but this shall not be considered as a precedent or waiver of the contentions of the Company as to other similar claims or grievances.

Based upon the above citation, it is not necessary to consider the merits of the dispute.

FINDINGS

The Board, upon consideration of the entire record and all of the evidence, finds:

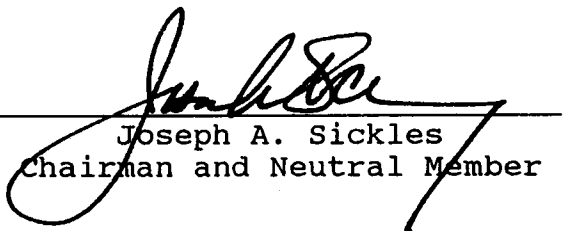
The parties herein are Carrier and Employee within the meaning of the Railway Labor Act, as amended.

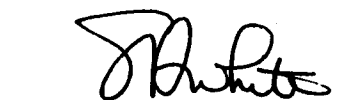
This Board has jurisdiction over the dispute involved herein.


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

AWARD

1. The claim is sustained.
2. Carrier shall comply with this Award within thirty (30) days of the effective date.


Joseph A. Sickles
Chairman and Neutral Member


SPENCER D. WHITE
Carrier Member


R. P. DEGENOVA
Organization Member

JUNE 28, 1993
DATE