Award No. 1662
Docket No. 1591
2NYNH&H-MA-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, THE

DISPUTE: CLAIM OF EMPLOYES: That in conformity with the current agreement and result of the joint check dated March 31, 1952, the Carrier be ordered to compensate Walter E. Downing for all time lost as a closed rostered welder from 8:00 A.M. on June 10, 1949 to April 11, 1952.

EMPLOYES' STATEMENT OF FACTS: Walter E. Downing, hereinafter referred to as the claimant, was employed by the carrier at Boston, Massachusetts, as a machinist welder within the scope of the Dover and South Hampton Streets closed rostered welders' pool, with a seniority date as of December 29, 1931. There the claimant remained in such service until he was granted a leave of absence to accept the position of general chairman of the International Association of Machinists to represent the employes of the machinists' craft in the employ of the carrier. However, he was absent on leave as general chairman of the machinists, beginning on January 8, 1943 through April 15, 1949 and thereafter, due to a personal injury, he was detained from reporting for duty until O.K.'d for work by his doctor on June 9, 1949.

The claimant elected to notify his foreman on June 9, 1949, of his intention to resume his duties in the closed rostered welders' pool at the South Hampton engine house at 8:00 A. M., Friday, June 10, 1949, but the carrier then and since has declined the right of the claimant to do so. Consequently, the claimant's resoration to the service with pay for all time lost retroactive to June 10, 1949, was progressed to this Division and its Docket No. 1430, Award No. 1552, by this reference thereto, is hereby made a part of this submission and for ready reference the "AWARD" reads:

> "Award: Claim remanded for disposition by the parties in accordance with the above findings."

The findings made by the Division above referred to, in applicable part read:

> "There is no dispute here about Claimant Downing's seniority date of December 29, 1931, on the so-called closed roster for welders. The only question to be resolved is whether the claimant

That this case is not properly before the Second Division requires only the application of principles so clear that there are no awards directly in point which can be cited. The principle referred to is that of **res ajudicata**—that an issue or claim for damages once submitted to a tribunal having jurisdiction may not thereafter be resubmitted to the same or any other tribunal having jurisdiction. The logic of the rule is based upon the same reasoning underlying the prohibition against placing a person in double jeopardy. The employes in Docket 1430 requested the relief now demanded in this docket. They may not again demand that relief in this docket.

The situation most nearly in point is covered by Third Division Awards 63 and 1215. In that case violation of the clerks' agreement was claimed and reparation for a stated period demanded. Such claim and demand were sustained in Third Division Award 63. Thereafter, the same claimants progressed another case alleging the identical violation but asking damages for a period earlier than that considered in the first case. In its Award 1215, the Third Division denied the claim based upon the principle which prohibits the splitting of causes of action. The reason underlying this latter principle is identical with that involved in the doctrine of **res ajudicata:** i.e., that the party against whom relief is demanded is entitled to have a dispute once submitted to a proper agency finally disposed of by a decision of that agency. The following from Award 1215 is pertinent:

> "This is an attempt on the part of the employes or their representative, the committee, to reopen the case settled by Award 63, and is a clear violation of the well established rule against splitting causes of action. There is neither reason nor justice in a rule which would permit an employe to divide a question into as many parts as may suit his convenience, without regard to the inconvenience thereby occasioned his adversary. There is no reason why the same rule should not apply before this Board as applies in general, forbidding the submission of a claim for damages on instalments in piece-meal fashion; otherwise, the employe could bring as many actions as he desired, covering, say, a week at a time or a few days at a time."

Another application of the same policy is illustrated by the case of **Michel v. Louisville & N R.R.**, 188 F(2) 224 (C.A. 5, 1951); cert. den. 342 U.S. 863. There plaintiff had progressed a claim for reinstatement as ticket clerk, restoration of seniority rights and reinbursement of wage loss to the Third Division of the Adjustment Board. The claim was denied. Thereafter, plaintiff brought this suit for damages for wrongful discharge and for other relief. Summary judgment for defendant was affirmed on appeal upon the ground that, having elected to follow the procedure prescribed by the Railway Labor Act to an award by the Third Division, plaintiff could not thereafter elect to pursue another remedy based upon the same cause of action. A like decision was reached in **Kelly v. Nashville, C. & St. L. Ry.**, 75 F. Supp. 737 (D.C., Tenn., 1948). See also: **Southern Railway v. Order Ry. Conductors**, 63 F. Supp. 306 (D.C.,S.C., 1945).

The rule against permitting two or more trials of a single cause of action is controlling here. This case presents the identical claimant, the identical issue and the identical period of time involved in the prior Award. Such double submission of the same question is, we submit, not permissible.

CONCLUSION: Carrier respectfully submits the claim should be declined.

FINDINGS: The Second 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 employe 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.

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

The claim presented by the organization in behalf of Claimant Downing in Docket No. 1591 is in part "as to compensation for time lost" the same as the one submitted in Docket No. 1430, which resulted in Award No. 1522.

Award No. 1522 directed the parties to make a joint check of the welding work being performed at the engine houses at Southampton and Dover Streets to determine whether or not there was sufficient of such work being performed by craft welders to the exclusion of rostered welders to justify returning Claimant Downing to a regular position. Pursuant to Award No. 1522 a joint check was conducted by the parties on March 19, 1952 and the results thereof were in favor of returning the claimant to service. Before he was returned to service in conformity therewith, however, the carrier found it necessary to drastically reduce its forces at Southampton and Dover Streets. This reduction was made effective April 11, 1952 and this, the parties agree, obviated the necessity to give further consideration to the claimant's immediate return to service. In light of these developments there remains only the question of whether the claimant suffered any deprivation of work between the time his right to return was established on March 19, 1952 and April 11, 1952 when such right ceased temporarily to exist because of the force reduction. The facts of record suggest that the claimant might reasonably have been restored to service not later than March 24, 1952 and that therefore there is a valid claim here for the days he could have worked from that date to and including April 11, 1952.

AWARD

Claim sustained to the extent indicated in the above findings less any amount earned in other employment during the period from March 24, 1952 to April 11, 1952, inclusive.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April, 1953.