

Award No. 2177

Docket No. 1963

2-CB&Q-EW

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Electrical Workers)
(Communications Dept.)**

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the words "radio appurtenances" stipulated in Rule 34A (2) and A (3) thereof includes the inspecting, testing, changing and charging of batteries of portable radios as exclusively the work of line employees in the Communications Department.

2. That accordingly the Carrier be ordered to forthwith assign the aforementioned work to linemen maintained under the provisions of the aforesaid agreement.

EMPLOYEES' STATEMENT OF FACTS: On or about September 17, 1951, the carrier made the election to install portable radios (walkie-talkie equipment) at such yards or terminals as indicated below:

- 1—Alliance, Nebraska
- 2—Aurora, Illinois
- 3—Beardstown, Illinois
- 4—Brookfield, Missouri
- 5—Casper, Wyoming
- 6—Galesburg, Illinois
- 7—LaCrosse, Wisconsin
- 8—Lincoln, Nebraska
- 9—St. Joseph, Missouri

The carrier utilizes this radio equipment on certain trains and each unit thereof is secured by the outbound train crew from, and turned in by the inbound train crew to the yard office, whereby comprehensive records are made and maintained of all such transactions by the yard clerks or in some instances by the telegraph operators.

within the applicable time limits. The carrier further contends that the Brotherhood of Railway Clerks has a material interest in this dispute, and must be given due notice and opportunity to protect its interest before a binding award can be issued.

If the merits of this case are reached, it must be denied, for it cannot be supported by the agreement between the parties. The practice on the property for many years fully supports the carrier's contention in this respect.

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.

This claim involves the work of inspecting, testing, changing and charging wet cell batteries used in portable radios. It is contended this work belongs exclusively to line employes in carrier's Communications Department by reason of Rule 34 A (2) and A (3) of the effective agreement with carrier. The relief asked is that the work be assigned to these linemen.

Portable radios were installed by carrier in May 1951 and it has, ever since, had the work here claimed by the linemen performed by yard clerks. A claim for this work was made in behalf of the Telephone and Telegraph Department linemen on October 13, 1951 and subsequently appealed to carrier's highest officer designated to handle such disputes. Staff Officer W. E. Angier, so designated, declined to allow the claim as of February 27, 1953.

Rule 24 (b) of the parties' agreement effective March 1, 1952, provides:

"In the event an agreement on the claim is not reached between the highest designated officer and the employe or his representative, the case may then be handled to the Second Division, National Railroad Adjustment Board, in accordance with the procedural requirements of the Railway Labor Act as amended. If no such procedure to the Second Division, National Railroad Adjustment Board is instituted within six (6) calendar months after the date of the decision of the highest designated officer of the Carrier, it is agreed that the claim will be considered disposed of and closed."

No appeal was taken from the decision of W. E. Angier made on February 27, 1953. Subsequently, on April 9, 1954, the same claim was again made to W. G. Bushman, chief lineman, and processed to Staff Officer W. E. Angier and, from his denial thereof, appealed to this Division and is the present issue before the Division. All through its processing on the property carrier asserted the matter was a closed issue because of its previous handling.

In Award 1510 of this Division, and Interpretation No. 1 thereof, the claim was not considered on its merits but dismissed because of the failure to file the claim with this Division within the time prescribed by the rules of the parties' agreement. When the same matter again came before this Division in Award 1586 it was held; "The award and interpretation thereof constitute a final determination of the claim. This is so even if it be a continuing claim. The failure to appeal within the time fixed by the cut-off rule is equivalent to an acceptance of the decision of the carrier. It is final and conclusive of all matters arising out of the alleged breach of the agreement." The same is

true here because of the failure to appeal from the February 27, 1953 decision of Staff Officer W. E. Angier which disposed of and closed this dispute.

In view of the foregoing we find the claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of July, 1956.