

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

HOUSTON BELT & TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood that the carrier is violating the Clerk's Agreement by

"(a) Requiring or permitting employees of connecting line carriers to check and furnish record to the Houston Belt & Terminal on cars received by the Houston Belt and Terminal from connecting lines; and

"(b) Requiring or permitting Houston Belt & Terminal Yard Checkers to check, record and card cars interchanged with connecting lines without paying transfer clerks rate of pay; and

"(c) Claim for the establishment of Transfer Clerks positions to check, card, and make necessary record of cars interchanged with connecting lines and that all employees involved in or affected by the carrier's action be compensated for all monetary loss sustained."

JOINT STATEMENT OF FACTS: "Prior to March 1, 1930 the Brotherhood did not have an agreement on this property. The current rules agreement became effective March 1, 1930 and a wage agreement became effective February 1, 1930 which listed every position on the property by the title and rate of pay.

"During the negotiations leading up to the wage agreement of February 1, 1930 rates of pay were mutually agreed upon for the performance of Transfer Clerks' work, and the duties of such Transfer Clerks were as shown in the second paragraph of Exhibit A.

"Exhibit A also discloses how the Transfer Clerks' work has been handled since the positions were abolished."

POSITION OF EMPLOYES: "The employees quote the following rules of our agreement in support of our position.

Rule 1.

"These rules shall govern the hours of service and working conditions of the following employees:

- (1) Clerks.
- (2) Other office and station employees, such as:
Office Boys,
Messengers,
Chore Boys,

the duties which are not regularly assigned duties of the Checkers. Therefore, your Honorable Board is respectfully petitioned to deny the claim of the employees."

OPINION OF BOARD: Two transfer clerk's positions were abolished in 1931. The work of these positions was assigned as disclosed in (a) and (b) of the claim. Objection to this action of the carrier was made for the first time on April 12, 1939. In the meantime, at the demand of the employees, and through the mediation agreement of 1937, the carrier had agreed to a blanket increase in the rates of pay for the clerks. Certainly the carrier never agreed to this increase in pay believing that thereafter there would be a demand for the restoration of these positions out of existence for six years, and about which no complaint had ever been made.

This record amply supports the conclusion that, at the time the carrier agreed to this increase in pay, it believed that the only demand was for an increase in pay for the position then in existence, and that the carrier would be called upon to pay only the positions then in existence or such other positions as it might create. This belief found its justification in the failure of the employees over a period of six years to protest the action of the carrier in abolishing the positions about which they now complain. As was held in Award 116, the claimant "has slept on his rights."

We recognize the prior awards of this Board relating to delays in presenting claims for acts which constitute continuing violations of agreements. We have no quarrel with these prior awards, however, we do not feel that these Awards are controlling of the fact situation now before us. We do not hold that mere delay will preclude this Board from considering the merits of a claim, but what we do hold is, where there has been no protest of the carrier's acts and the delay has been so extended that the carrier is justified in believing the employees have concurred in its acts, and in this belief the carrier at the demand of the employees increases rates of pay, it is too late thereafter for the employees to demand of this Board that positions, long out of existence at the time the increase in pay was granted, or the work of these positions, should be restored under the increased rates of pay.

While all the elements of a technical estoppel are perhaps not present, nevertheless, we are of the opinion that the doctrine of laches should preclude the claimant from now obtaining from this Board the rights it asserts.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

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

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the laches of the claimant precludes this Board from considering the merits of this claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of December, 1940.