

Award No. 3231

Docket No. TE-3221

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Sidney St. F. Thaxter, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE NEW YORK CENTRAL RAILROAD COMPANY

(Line West of Buffalo)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on New York Central Railroad, Line West of Buffalo, that T. M. Hadley who was, admittedly so by the Carrier, improperly displaced from his regularly assigned position of second trick ticket clerk-telephoner at Painesville, Ohio, on January 18, 1932, by a senior employee in violation of the time limit of Article 24-(b) of the then prevailing telegraphers' agreement, and that W. A. Smith who was in turn, admittedly so by the Carrier, improperly displaced from his regularly assigned position of third trick telegrapher-leverman at Willoughby, Ohio, on January 19, 1932, by T. M. Hadley, shall be compensated for their actual necessary expenses under the provisions of Article 13-(a) of the then prevailing telegraphers' agreement from the time improperly displaced until restored to their rightful positions as follows:

(a) T. M. Hadley, \$322.48, travel time and actual necessary expenses, including auto expense at 7c per mile on one hundred and twenty-seven (127) days extending from January 19, 1932, the date improperly displaced, through June 14, 1932, when he was restored by the Carrier to his rightful regularly assigned position of second trick ticket clerk-telephoner at Painesville, Ohio.

(b) W. A. Smith, \$165.35, mileage incurred by the use of his own automobile at the rate of 7c per mile going to and from his home and other positions from January 19, 1932, the date improperly displaced through April 11, 1932, when he bid on and was regularly assigned to the third trick telegrapher-leverman position at "W" tower, Ashtabula, Ohio.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date May 16th, 1928, as to rules of working conditions and rates of pay, was in effect between the parties to this dispute at the time of this occurrence.

Prior to January 19, 1932, T. M. Hadley was the regularly assigned ticket clerk-telephoner at Painesville, Ohio, and W. A. Smith was the regularly assigned third trick telegrapher-leverman at Willoughby Tower, Ohio.

On January 1, 1932, the position of Ticket Clerk-Telegrapher at Geneva, Ohio, and regularly assigned to Lucy Freeman, was abolished. Miss Freeman then notified the Management within the ten (10) days allowed by the rules that she would displace on the first trick Ticket Agent-Telephoner posi-

4. Awards of the National Railroad Adjustment Board fully support the carrier's position.

It is the carrier's final contention that these long-abandoned claims are wholly without merit on any premise whatsoever, and should be dismissed.

OPINION OF BOARD: The first of these claims is for travel time and actual expenses incurred by an employee during the period from January 19, 1932 to June 14, 1932 because of improper displacement by the carrier from his assigned position. The second claim is for expenses in traveling incurred by an employee who used his automobile from his home to other positions, such travel having been necessary because of his wrongful displacement from his assigned position. The period involved in this instance was from January 19, 1932 to April 11, 1932. Both employees on February 8, 1932 through their local chairman protested their displacements.

After the controversy with respect to the displacements had been settled by the carrier in favor of the employees, each submitted a claim for his expenses which in each instance was denied, apparently on the ground that the settlement of the claims for displacement was intended to dispose of any claim for reimbursement for expenses. On August 3, 1932 Division Superintendent Brogan denied the claim of Hadley and on August 6, 1932 he denied the claim of Smith. On October 10, 1932 the matter of the claims was discussed by representatives of the employees with the Supervisor of Wage Schedules of the carrier; but no decision was ever made and there is no evidence that anything was ever done thereafter until April 19, 1945, except that there appears on the file a notation that an appeal was taken verbally on November 10, 1932. On April 19, 1945 there was a further discussion of the claims and again on May 5, and on June 8. On June 11, 1945 a letter was sent by the carrier formally denying the claims.

It is not necessary to decide whether or not there was merit in these claims when they were originally presented. It is undisputed that from November 10, 1932 until April 19, 1945, a period of twelve and a half years, no attempt was made by these employees or by anyone in their behalf to bring forward either claim. Nor, so far as the record shows, was either one ever mentioned. The claims were formally filed with this Board on November 6, 1945.

The carrier argues that the claims, not having been submitted to the System Adjustment Board, which was in existence from March 23, 1929 until the passage of the Railway Labor Act, on June 21, 1934, were not pending and unadjusted on that date, and hence, under the terms of the Act, could not be brought before this Board. We shall assume that this objection is not well taken. But the period of thirteen years during which these claims lay dormant is quite another matter. The Committee calls attention to the fact that there is no statute or rule of the agreement limiting the time within which claims should be presented to this Board. That is true. Even though the elements of a technical estoppel may be lacking, we do not believe that it is in accord with the spirit of the Railway Labor Act, the purpose of which is to set up machinery for the prompt adjustment of grievances, that a claim may be left dormant for more than a decade without a suggestion during that period on the part of the claimant that it was still alive and then be brought forward to this Board as an unadjusted dispute. All disputes must have an end some day; and to hold that these claims were properly presented to this Board on November 6, 1945 would mean that a claim, once presented to the carrier and denied, remains a pending and outstanding grievance for all time or until it is formally presented to this Board and a decision rendered on it. We assume that the employees would not deny that a claimant may, by himself or through his representative, formally assent to the denial of a claim by the carrier, and thereby acknowledge that the dispute is ended and the grievance no longer exists. But actions may speak as well as words; and conduct, which indicates that a claim has been dropped, may be as effective as a formal assent to the decision of a carrier denying it. The determination of this question depends on the facts of each case. As to the proper determination of the issue now before us, there can be no doubt. We must hold that

the failure to take any action on these claims for a period of nearly thirteen years constituted an abandonment of them. We think that the following awards, though involving somewhat different facts, acknowledge the correctness of such principle. 1002, 1606, 1645, 2126, 2576.

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 herein; and

There is no basis for an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1946.