

Award No. 6784

Docket No. TE-6770

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

J. Glenn Donaldson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**ATLANTA & WEST POINT RAILROAD—THE WESTERN
RAILWAY OF ALABAMA**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atlanta and West Point—Western Railway of Alabama: that

(a) The Carrier violated and continues to violate the provisions of the agreement between the parties when it requires or permits employes not covered by the terms of said agreement to block trains, perform "OS" work by reporting arrival of trains, copy train orders, and handle other communications work of record by the use of the telephone at Roanoke Junction, Alabama; and

(b) In consequence of its violative acts the Carrier shall be required to compensate the senior idle employe covered by the Telegraphers' Agreement on the district where the violations occur in the amount of one day's pay of eight hours commencing September 8, 1950, and continuing until such time as the Carrier may assign this work to an employe covered by the Telegraphers' Agreement.

EMPLOYES' STATEMENT OF FACTS: An agreement bearing effective date of September 1, 1949, as amended, is in effect between the parties to this dispute.

The following diagram shows the location of Roanoke Junction and Opelika, Alabama, as well as the trackage in the territory involved in this claim:

in event of a sustaining award, the claim should only run from September 8, 1950 to June 18, 1952.

TO SUMMARIZE:

(a) Carrier has conclusively demonstrated by the record that the work complained of is by tradition, historical practice and custom not reserved exclusively to Petitioners and there is no merit to their claim.

(b) That the claims for senior idle employees are ambiguous and not valid.

(c) That the claim as filed is a duplicate of claim filed in August 1937 and is outlawed by reason of the General Chairman having failed to appeal from denial by the highest officer in December 1937.

In views of the facts presented and for the reasons stated, this claim should be declined.

All data contained herein has been made available to Petitioner.

(Exhibits not reproduced.)

OPINION OF BOARD: In respect to the matter of prior abandonment of a similar claim, we have previously ruled that employes may waive their rights under the Agreement in a particular instance without being barred from thereafter asserting a claim upon the same facts. (Award 4054). Regarding undue delay in processing a dispute to this Board, see recent Award 6721.

This Division, on February 1, 1954, in Award 6487, denied the claims of this Organization in what appeared a similar dispute arising upon the same property. There, claims were made because seven conductors had allegedly copied train orders, received by telephone, at points where no telegrapher was employed. It is argued that said Award is incorrect because it is based upon a letter written by the General Chairman many years before which, it is stated, dealt with an entirely different subject. Further, that the cases are distinguishable because in that subject of Award 6487 only occasional train orders were handled by the Claimants while in the instant case "OS" reports, line-ups and train orders are handled upon a regular, everyday basis by non-telegraphers. Nevertheless, both cases involve communications of record and the distinctions pointed out would seem to be of degree and not of substance. If in all its essentials it is the identical dispute, question arises as to how far we may proceed in giving reconsideration to the issues once decided.

Study of the docket in the earlier case reflects that the same Awards were cited as controlling and, in substance, the same arguments were made. We find no glaring error in Award 6487 such as to justify reversal. As stated in paragraph 5 of the Memorandum to Accompany Award 1680, and reaffirmed in Award 6710:

"If a case is presented involving the same controlling facts and the same rule as were involved in a previous Award, and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed * * *. For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the latter referee * * * should be substituted for that of the former referee."

A contrary course would tend to discourage settlements between the parties and discourage prompt compliance with Awards rendered.

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 Employee involved in this dispute are respectively carrier and employee 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 within dispute is governed by our holdings in Award 6487, the issue being identical.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1954.