

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul N. Guthrie, Referee

PARTIES TO DISPUTE:

ORDER OF RAILROAD TELEGRAPHERS

MISSOURI PACIFIC LINES (In Texas and Louisiana)

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri Pacific Lines in Texas and Louisiana, that:

(1) The Carrier violates the provisions of existing agreements when it requires an employe not covered by the agreement to assume and perform the duties and work of the agent-telegrapher at Overton, Texas, on Sundays, an assigned rest day of the agent-telegrapher, beginning with the first Sunday in September, 1949, which work and duties are covered by the scope of the Telegraphers' Agreement and normally performed by the agent-telegrapher at Overton, Monday through Saturday, inclusive.

(2) That beginning with the first Sunday subsequent to September 1, 1949, and continuing until the violation is corrected the Carrier shall compensate the agent, Mr. Roy A. Brown for the difference in compensation paid to him for any service performed on Sundays and the amount he would have earned, based on eight hours per day at the time and one-half rate, had the rules of the Telegraphers' Agreement been properly applied.

OPINION OF BOARD: This docket is a resubmission of a claim which was before the Division in Docket TE-6126 on which Award 6072 was made on January 30, 1953. In that Award the Division did not rule on the merits of the dispute, but instead dismissed the claim without prejudice because notice pursuant to the requirements of Section 3, First (j) of the Railway Labor Act had not been given to the Clerks' Organization.

Petitioner in resubmitting the dispute in the instant docket asks that the Division consider and render an award on the merits of the claim as originally made in Docket TE-6126.

It is necessary to consider two preliminary questions in connection with this case. First, can the Division consider the case in view of the fact that a prior award was rendered concerning this identical case. In other words, is the case now barred because of the principle of *res adjudicata* and because of the provisions of Section 3, First (n) of the Railway Labor Act?

Second, is the Division required to give notice to the Clerks' Organization in accordance with the provisions of Section 3 First (j) of the Railway Labor Act?

For all relevant purposes these questions are the same for the instant case as for Docket TE-7748 on which Award 8105 is made this day. Therefore, the discussion of these above stated preliminary questions in Award 8105 is equally applicable here. As in that award, the principle of *res adjudicata* applies to the extent that the Division decided that notice must be given to a so-called third party, the Clerks' Organization. We shall not re-decide that. The prior decision stands on that matter.

Nevertheless, it is appropriate to point out that we agree with decision made in Award 6072 to the effect that notice, under the circumstances involved, was a condition precedent to a consideration of the merits. The Referee now sitting has discussed this matter of third party notice to some extent in Award 8022. The views there expressed apply here.

The conclusions reached in Award 6072, 8022 and Award 8105 were dictated by the requirements of Section 3, First (j) of the Railway Labor Act, as construed by the various courts which have considered the matter. Section 3, First (j) places the obligation of giving notice to other parties upon the Board. Therefore, the defect precluding the consideration of the merits at this time is one which the Board has the power and obligation to remedy. Since it is the Board's responsibility to remedy the defect, it is appropriate for the Board to retain jurisdiction, but to defer any action on the merits until such time as it has given notice to the Clerks' Organization in accordance with the requirements of Section 3, First (j) of the Railway Labor Act as interpreted by the courts.

Award 7466 is in particular point in the instant case since it involved a very similar situation where a resubmission was made after a prior award had dismissed the claim because of the failure to give notice.

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 any decision on the merits must be deferred.

AWARD

Consideration of and decision on the merits is deferred pending notice by the Division to the parties, Carrier, Order of Railroad Telegraphers, and Brotherhood of Railway Clerks, as contemplated by Section 3, First (j) of the Railway Labor Act as interpreted by the Courts.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of October, 1957.