

Award No. 8543

Docket No. TE-7307

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Whitley P. McCoy, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

THE CHESAPEAKE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers of the Chesapeake & Ohio Railway (Chesapeake District) that:

(a) the carrier violated and continues to violate the terms of the prevailing agreement between the parties, when, effective January 1, 1950, it arbitrarily and without negotiation removed from the scope of said agreement and from employees covered thereby, the work of handling ticket sales and related work at Fostoria, Ohio, and required or permitted an employee or employees not covered by said agreement to perform such work.

(b) that the work of handling ticket sales and related duties at Fostoria, Ohio, be restored to the scope of the agreement and to the employees covered thereby.

See Award 8326 for Statements of Facts and Positions of the Parties.

OPINION OF BOARD: This claim was the subject of Award No. 8326 which deferred consideration and decision on the merits pending notice to the Brotherhood of Railway and Steamship Clerks. Such notice having been duly given to that Organization as well as to the original parties, and a further hearing having been had, at which the Clerks failed to appear, we now proceed to a consideration of the merits.

The claim is that effective January 1, 1950, the Carrier removed the work of handling ticket sales and related matters from employees covered by the Telegraphers' Agreement and required such work to be performed by employees under the jurisdiction of the Clerks. The Telegraphers contend that such action violated the Scope rule of their Agreement with the Carrier.

At the outset the Carrier invokes the doctrine of laches as a bar to the claim. The claim was not originally filed with the Carrier until November 23, 1950, practically eleven months after the action complained of, and was denied by the Carrier on November 27, 1950. This denial was appealed to the next

higher officer of the Carrier on December 1, 1950, who denied it on December 29, 1950. It was appealed to the next step on January 8, 1951, and denied on April 16, 1951. From that date until September 21, 1954, the Organization took no action. On the latter date it advised this Board of its intention to file claim. The Carrier contends that a delay of three and a half years between the final denial by the Carrier and appeal to this Board should alone be sufficient to require denial of the claim.

The Organization argues that since no claim for compensation is made here, the Carrier has suffered no loss from the delay, and relies upon those awards where the claim has been sustained in spite of delay, and the delay penalized only by denial of compensation.

We might be inclined to adopt that view in a case of delay of only a year or two. But where, as here, the delay exceeds three and a half years, we think that sound policy dictates the denial of the claim in its entirety. Among the many decisions in which we have so held is Award No. 4941, Referee Edward F. Carter, a case precisely similar to this decided in 1950. It, too, protested the removal of work from an employe covered by the agreement and its transfer to one not covered, but also asked for lost pay. The Board did not content itself with denial merely of compensation, but denied the claim itself because of the delay. In that case the delay was of a little less than three years. See also Award No. 8209, citing other awards. We feel constrained, in the interest of the sound and orderly procedures prescribed by the Railway Labor Act, to apply the principle of those awards and deny this claim.

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 there was no violation of the Agreement for which the Carrier is chargeable.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December, 1958.