

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks' Agreement:

1. When it abolished one Adjustment Clerk's position in Group 1 and six laborers' positions in Group 3 at Florence Transfer, S. C., on July 1, 1949, and transferred the work of transferring and adjusting bad order and overloaded cars out from under the scope and operation of the Clerks' Agreement, and
2. That the senior (unemployed), extra or furloughed Clerk who is listed upon the Class 1 Clerks' Seniority Roster, District No. 1, Florence Transfer and Freight Office, be compensated for wage loss sustained, less amount earned in other employment, if any, for each day retroactive to July 1, 1949, the date the work was removed from the scope and operation of the Clerks' Agreement, and
3. That the six (6) senior (unemployed, extra, or unassigned) laborers listed upon the Class 3 Seniority Roster, District No. 1, Florence Transfer and Freight Office, be compensated for wage loss sustained, less amounts earned in other employment, if any, for each day retroactive to July 1, 1949, the date work was removed from the scope and operation of the Clerks' Agreement.
4. That the Carrier be required to return such work, of adjusting bad order and overloaded cars at Florence Transfer, to the scope and operation of the current agreement between the parties, by assigning such work in accordance with the rules thereof.

Note: The individual entitled to receive payment of claims in each instance to be determined by a joint check of the seniority roster and payrolls.

ceedings for the final disposition of the claim or grievance are instituted by the employe or his duly authorized representative and such officer is so notified. It is understood, however, that the parties may, by agreement in any particular case, extend the six (6) months period herein referred to."

There was no additional waiver of the limitation contained in Rule 57 and nothing further was heard from the claim until September 14, 1955 when Mr. A. L. Groves, General Chairman, Clerks' Organization, who succeeded Mr. L. L. Wooten, revived the claim in letter to Carrier's Assistant Vice-President. A copy of Mr. Groves' letter is attached as Carrier's Exhibit "C".

It is apparent that by the terms of Rule 57 quoted above, the decision of December 29, 1952 declining the claim became final and binding and the claim forever barred except for the sixty day period preceding September 14, 1955. In short, even if the claim here at issue is valid, which Carrier emphatically denies, there can be no retroactive application for more than sixty days prior to September 14, 1955.

Carrier has shown that the same work claimed by the Clerks' Organization is also claimed by the Brotherhood of Firemen and Oilers; that if the instant claim is granted, the rights of the Firemen and Oilers would be adversely affected. Although the Firemen and Oilers are clearly involved in this dispute, no notice has been served on them pursuant to the requirement of Sec. 3 First (J) of the Railway Labor Act:

"Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them."

Carrier submits that the failure to give notice constitutes a violation of Railway Labor Act and that no valid award may be entered in favor of the claimant until such notice is given.

The respondent Carrier reserves the right, if and when it is furnished with the ex parte petition filed by the petitioner in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioner in such petition and which have not been answered in this, its initial answer.

Data in support of the Carrier's position have been presented to the Employees' representative.

(Exhibits not reproduced.)

OPINION OF BOARD: The record in the case before the Board, discloses that the Statement of Claim herein is the same as was submitted to this Board in Docket CL-5590, and determined by the Board in its Award No. 5751.

The question has been raised here by Carrier, in its submission, as to the jurisdiction of this Board, in view of the Opinion and Findings in Award No. 5751, covering the same matters as are involved here.

Carrier, however, in addition to defending here on jurisdictional grounds, also relies on the provisions of Rule 57, of the effective Agreement. Following the dismissal of the case by the Board in Award 5751, dated May 1, 1952, the organization made claims to Carrier, as is shown by the docket here before us. Such claims were made to Carrier on December 23, 1952, and declined by Carrier on December 29, 1952. Carrier agreed with the organization, and granted an extension of six months time to perfect its appeal from the denial of the claims as made by Carrier. Such extension of time was granted by Carrier effective September 1, 1952, in compliance with the provision of Rule 57 authorizing such extension of time. The organization took no further steps to effect its appeal until September 14, 1955, although the time allowed by the extension of time expired approximately March 1, 1953.

Under the provisions of Rule 57, of the Agreement, the claims before us are improper and should be denied.

As to the question of jurisdiction of the Board in this cause, as effected by Award 5751, made by this Board, we are of the opinion that the claims were finally adjudicated by said previous Award, and this Board has no jurisdiction over the docket before us.

In view of the provision of Section 3, First (m) of the Railway Labor Act, this Board must hold that the Opinion and Findings as shown in Award 5751 by this Board became final and binding upon both parties to the dispute, therefore we have no authority to consider the merits of the claims submitted here. The claims here should be dismissed.

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, under the provisions of Rule 57 of the Agreement before us, and further based upon lack of jurisdiction of the Board over the subject matter here, the claims here should be dismissed.

That, in view of the foregoing Opinion and Findings, no consideration is given to question of 3rd Party Notice as raised by Carrier.

AWARD

Claims dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 8th day of April, 1959.