

Award No. 8837
Docket No. CL-8354

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**

**CHICAGO, ROCK ISLAND AND PACIFIC 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 they transferred clerical positions at North Fort Worth, Texas to the Local Freight Office and Peach Street Yard at Fort Worth, Texas, and in turn assigned certain clerical work to the Supervisor Agent, an official of the company, and required him to perform routine clerical work.

(2) That the clerical work performed by the Supervisor Agent, an official of the company, be returned to the clerical forces at Fort Worth, Texas.

(3) That the Carrier be directed by appropriate order to bulletin the proper clerical position at North Fort Worth, Texas, and the employee assigned to the position, as well as other clerical employees moving up on account of such vacancy being bulletined, be paid any monetary loss sustained, retroactive to November 24, 1951.

EMPLOYEES' STATEMENT OF FACTS: The clerical force at North Fort Worth, Texas Station on October 16, 1923, was as follows:

Cashier	\$166.77
Rate Clerk	156.77
Bill Clerk	150.00
Asst. Bill Clerk	145.00
Night Clerk	141.53
Car and Demurrage Clerk	125.00
Car and Switching Clerk	150.00

OPINION OF BOARD: The record before us indicates that on November 24, 1951, a letter was addressed to Division Superintendent for Carrier by the Division Chairman of the organization. The letter was in reference to alleged clerical work being performed by the Agent at North Fort Worth in deference to the work being performed by Clerks at this point, and for which the organization stated that unless such work was returned to the organization claim would be filed against the work. On July 24, 1953, the record shows, the General Chairman wrote the Superintendent for Carrier requesting reply to their letter of November 24, 1951. It will be noted no claims were included in either letter, nor were claims made on behalf of any employees mentioned in the letters. It was not until October 15, 1953, that the General Chairman wrote Carrier's Manager of Personnel that he desired to appeal the matter to the Manager of Personnel, and desired to file claim on behalf of the clerical employees who would be assigned by a bulletin to perform this work, with effective date of claim November 24, 1951.

This letter above referred to, written October 15, 1953, is the first time a claim was asserted by the organization and presented to Carrier, some twenty-three months after the complaint was made by letter of November 24, 1951. There is nothing in the record to show that any monetary claims had been filed by local representatives as stated in the letter of the General Chairman of August 3, 1953, to the Superintendent. On October 15, 1953, the General Chairman submitted a letter to the Manager of Personnel, complaining that the Superintendent had failed to remove the clerical work from the Agent and was filing claim for the clerical employee who would by bulletin be assigned the work. The letter from the Manager of Personnel of November 20, 1953, is self-explanatory, and denial was made at that time of the alleged complaint by the organization. It is argued that the Carrier used the word "claim" in its denial, that therefore Carrier had recognized that the complaints alleged by the organization were considered as a claim, and that Carrier had waived any defenses that the protests were not sufficiently progressed as a proper claim. It was not until January 1956 that the organization filed its ex parte submission with the Board, a period of nearly three years following the denial by Carrier.

Carrier defends its position by stating that since 1940 all the clerical work, if any, has been performed by the Agent at North Fort Worth. Carrier objects to the manner in which the organization has progressed this case to the Board. It will be noted that following the denial of the alleged claim or protest by the Manager of Personnel, Carrier's highest designated officer, that it took a period of approximately three years for the organization to appeal such decision to this Board. Such a delay is unreasonable; this Board has held in numerous awards that such appeal must be handled promptly and in an orderly manner. While it appears that no time limit rules for filing claims are provided for in the agreement between the parties, nor in the Railway Labor Act, we must conclude that here, approximately three years after a denial by Carrier, the organization made no effort to progress this alleged claim and Carrier had a right to assume that the claim would be abandoned. See Awards 4941, 6229.

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 we conclude this docket was not handled or considered properly on the property, and further conclude that the claims herein are not properly before this Board and should be dismissed for the reason the Board does not have jurisdiction over the parties. The Board arriving at the foregoing conclusion, does not deem it necessary to consider the merits of the alleged claim, nor the further jurisdictional question argued by Carrier as to the matter of notice to third parties.

AWARD

Claims dismissed in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 27th day of May, 1959.