

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY—Eastern Lines**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka and Santa Fe Railway System, that:

(1) The carrier violated and continues to violate the agreement between the parties when, effective July 1, 1950, it removed from the scope of said agreement and from the employes covered thereby at Saffordville, Elmdale, Clements, Cedar Point, Peabody and Walton, Kansas, the duties of loading, unloading and handling mail, baggage and express to and from trains between the station warehouses and/or mail boxes and trains arriving and departing at said stations, outside the assigned hours of the agents at these one-man stations, a part of whose duties it is and has been to perform this work; and

(2) The Carrier improperly transferred to the members of the train crews and/or other employes on certain trains not subject to said agreement the aforesaid duties; and

(3) These duties and the work here involved shall be restored to said agreement and to the employes under the agreement; and

(4) The agents at these one-man stations named herein, shall be compensated under the call and/or overtime rules, for each occasion on which employes not covered by said agreement have performed the aforesaid duties and work at these stations since June 1, 1950, and thereafter until the violation ceases.

EMPLOYEES' STATEMENT OF FACTS: Agreements between the parties to this dispute bearing effective dates of December 1, 1938 and June 1, 1951 are in evidence.

On about January 1, 1939, the Carrier established bus-truck service between Emporia, and Newton, Kansas, a distance of 78 miles with scheduled

the orderly procedures prescribed in the Railway Labor Act and by agreement rules, be restricted to a period commencing not earlier than sixty days prior to the date such new claim was submitted to the Carrier.

It will therefore be apparent that if the Board was (1) to accept jurisdiction in the instant dispute and permit the Employees to resubmit the one and the same claim that was dismissed by the Board in its Award No. 6682, and (2) perchance sustain the Employees' claim in disregard of the record which requires a denial thereof, the Board would thereby impose an unjustifiable penalty upon the respondent Carrier, in disregard of the terms of the Railway Labor Act and the agreement rules in effect between the parties, by awarding penalties in a claim which had been dismissed by a final and binding award.

Moreover, if the Board was to accept jurisdiction in the instant dispute and permit the Employees to thereby resubmit the identical claim that was dismissed by the Third Division in its Award No. 6682, dated June 18, 1954, it would not only permit but also encourage the petitioner and others to unnecessarily delay the resubmission of claims which had been dismissed by prior Board awards, in the hope that they would thereby be successful in assessing the carriers with unreasonable accumulations of continuing penalties.

* * * * *

Without prejudice to its position as previously set forth herein that the claim in the instant dispute is improperly on appeal with the Board and should be dismissed by the Third Division for lack of jurisdiction, the Carrier respectfully asserts that the Employees' claim is entirely without support under the agreement rules and should be denied in its entirety for the reasons set forth in the Carrier's submission and subsequent briefs in Third Division Docket No. TE-6465 and which are hereby referred to, reaffirmed and made a part of this submission.

It is the respondent's further position that in the event the Third Division should accept jurisdiction in the instant dispute and sustain the Employees' claim, in disregard of the record which warrants either a dismissal or complete denial thereof, the penalties claimed by the Employees should be denied because of the Employees' failure to comply with the orderly procedures prescribed in the amended Railway Labor Act and in the agreement rules in effect between the parties with regard to the presentation of claims and grievances.

Inasmuch as it is uninformed as to whether the Employees will rest on the record in Docket TE-6465, or if they will elect to ignore that record and attempt to amend the position they advanced therein, the Carrier reserves the right to submit such additional facts, evidence and arguments as it may conclude are necessary in reply to the Organization's ex parte submission, including any subsequent oral arguments or briefs the petitioner may present in this dispute.

All that is contained herein has been both known and available to the Employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: The facts presented in the record and Statement of Claim are identical and the same as that presented in Docket No. TE-6465, Award No. 6682, by which Award this Board dismissed the then pending case

for failure by the Board to give proper notice to interested parties other than those represented by The Order of Railroad Telegraphers.

Following the adoption of Award No. 6682, on June 18, 1954, the Organization resubmitted the identical claims to this Board as identified in the docket before us.

From a review of this docket and the record in Docket No. TE-6465, we must conclude that the Board has *no jurisdiction over the claims before us*, in view of Award No. 6682, made by this Division. Also what this Division has already stated in its Opinion in Award No. 8760, where we have a similar situation concerning the jurisdictional question involved we must hold that the Board has no jurisdiction over the parties or subject matter before us. Also see Interpretation No. 1 to Award No. 1740, Second Division, as applicable here.

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; and

The claims here are improperly before the Board.

AWARD

Claims dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of October, 1959.