

Award No. 9452
Docket No. TE-8069

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
— COAST LINES —**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway (Coast Lines), that:

1. The Carrier violated the terms of the current Agreement between the parties when, on September 15, 1947, it declared abolished the three telegrapher-clerk positions in the passenger station at Riverside, California, without in fact discontinuing the work previously performed by the incumbents and assigned the performance of the same to employees not covered by said agreement, and
2. The work formerly performed by said three (3) telegrapher-clerks at Riverside passenger station shall be restored to the agreement and be performed by employees covered by said agreement; and
3. The three (3) employees improperly displaced as a result of the violation, shall be restored to their respective positions and compensated for all time lost plus expenses while required to work away from their regularly assigned station (Riverside, California passenger station); and
4. All other employees adversely affected by the Carrier's action in arbitrarily removing from the Agreement work previously performed by the three (3) displaced telegrapher-clerks at Riverside, California, shall likewise be restored to their respective positions and reimbursed for all monetary losses sustained.

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

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 a complete denial thereof, the penalties claimed by the Employees should be denied because of:

(1) The Employees' withdrawal of the same identical claim in Docket TE-5829, which delayed the adjudication of the claim in the instant dispute, and

(2) The Employees' failure and refusal to submit and handle their claim in the instant dispute to a conclusion with the Carrier as a new claim, as required by the orderly procedures prescribed by the amended Railway Labor Act and the agreement rules in effect between the parties hereto with regard to (1) the presentation and handling of claims and grievances and (2) the limitation on monetary claims.

Inasmuch as it is uninformed as to whether the Employees will rest on the record in Docket TE-5829, 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: This claim, filed August 17, 1955, was filed previously (Docket No. TE-5829) and dismissed without prejudice on May 7, 1954 by Award No. 6605.

The dismissal was based on the ground that notice to the Brotherhood of Railway and Steamship Clerks was required by Section 3, First (j) of the Act and that notice had not been given.

The basic issue is the same as that presented in Docket No. TE-8068 and this claim will be dismissed for the reasons set forth in Award No. 9451 disposing of that docket.

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; and

That the Board is without jurisdiction to entertain the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June, 1960.