

Award No. 10251

Docket No. TE-9149

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Albert L. McDermott, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**JOINT TEXAS DIVISION OF CHICAGO, ROCK ISLAND AND
PACIFIC RAILROAD COMPANY—FORT WORTH AND DENVER
RAILWAY COMPANY. (Burlington-Rock Island Railroad Company)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Joint Texas Division of Chicago, Rock Island and Pacific and Fort Worth and Denver Railway, that:

The Carrier violated the agreement between the parties when it abolished the telegrapher's position at "GM" Office, Houston, Texas, and assigned the work of the position to employees having no seniority rights under the agreement.

2. Carrier be required to restore the work to employees under the agreement and pay the senior idle telegrapher, extra in preference, one day's pay each day except Saturdays and Sundays, commencing January 10, 1956, and continuing thereafter until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof,

The Carrier had established and maintained for many years a telegraph office located at Houston, Texas, known as "GM" office, to perform communication and related work required by the Carrier at that point. For several years prior to July 5, 1955, the assigned hours were from 8 A. M. to 5 P. M., with rest days Saturday and Sunday. Because the Auditor's office closed on Saturdays and Sundays, the position was not filled on rest days. Under date of July 7, 1955, the Carrier issued a bulletin to all concerned that effective with the close of business on July 5, 1955 (two days prior to date of bulletin) "GM" telegraph office, Houston, was abolished, and that all telegraph business formerly handled through this office would thereafter be handled through "BX" office at Houston. "BX" office is a telegraph office operated by and manned by employees of the Houston Belt and Terminal Railway, located on the first floor of the Union Station building at Houston; "GM" office was located on the third floor of the same building.

Agreement, then there exists considerable confusion as to the application of Article V of the National Agreement of August 21, 1954. However, the Carrier is constrained to believe that for the principle to prevail that the case at bar is a new issue, the Board would have to hold Article V of the August 21, 1954, Agreement, covering time limit for progressing claims, is warped and emasculated in order to hold that a claim can be closed out under Section 1 of that agreement and then revived under Section 3 of the same agreement. As stated above in Carrier's Submission, the Board should hold that there should be an end to the dispute and deny this claim.

(4). The records show that the purpose for which the position in question was established, i.e., to serve the general offices of the then existing railroad, has disappeared. There is no longer any reason to augment the service that the telegraphers on the HB&T can provide to adequately serve the railroad by reason of the abolishment of the various general offices at Houston. The Carrier certainly has the right to discontinue a position when it is no longer needed.

(5). The work remaining on this position was not transferred to others who did not have contractual rights to perform the work. The records show that for all the years that the position of clerk-telegrapher was maintained on the Burlington-Rock Island Railroad, the telegraphers on the HB&T performed more hours of service work for the Burlington-Rock Island than did the position in dispute. If the telegraphers on the HB&T have a right to perform any of this work, then they have a right to perform all of it. The scope rule of the HB&T Telegraphers' Agreement shows that they have a right to perform the work in dispute.

For all the reasons given, the claim is without support and should be dismissed or denied, and the Carrier respectfully requests that the Board so hold.

Carrier affirmatively states that all data herein and herewith have previously been submitted to the Employees.

OPINION OF BOARD: On July 5, 1955, the clerk-telegrapher position at Houston, was abolished. On August 23, 1955, Organization presented a claim to the Carrier based on the abolishment of the position. Both parties admit that this claim was not properly processed under Article V, Section 1(b) of the August 21, 1954 Agreement and became barred. The party for whom the original claim was made resigned from the Carrier's service on October 29, 1955. Organization filed this claim on March 10, 1956, in behalf of the senior idle employe (extra in preference).

Section 1(b) of Article V reads:

"(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed but this shall not be considered as a precedent or waiver of the contentions of the employes as to other claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the

property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose."

Section 3 of Article V which is also pertinent to our discussion provides:

"3. A claim may be filed at any time for an alleged continuing violation of any agreement and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employee held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient."

While the present claim is considered for our purposes a continuing claim under Section 3 of Article V, it is based on the alleged continuing violation, namely the abolishment of the same position at Houston, for which a claim was filed on August 23, 1955. We cannot adopt a construction of Section 3 which would limit the effect of Section 1 of the Agreement to grievances which do not continue. Continuing claims are not open to refileing, either once or repeatedly. See Award 9447.

The claim is barred as a result of the operation of Section 1(b) barring the claim of August 23, 1955.

The Board is without authority to make an award on the merits.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 the Board has no authority to consider this claim on the merits, and must therefore dismiss 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 13th day of December, 1961.