

Award No. 10329

Docket No. CL-9690

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that,

(a) The Carrier violated the Agreement when, at Dalton, Georgia, on October 1, 1952, it assigned to Telegraphers, employees not covered by the Clerks' Agreement, work covered by the Clerks' Agreement and regularly assigned to employees within the scope of the Clerks' Agreement.

(b) Mr. R. V. Ray, Jr., and Mr. R. L. May, their substitutes or successors shall now be additionally compensated for a minimum "call" of two hours at time and one-half, beginning sixty (60) days prior to August 10, 1956, and continuing until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: At Dalton, Georgia, the Carrier's Freight and Passenger Stations are located approximately two city blocks apart. On the effective date of the occurrence here complained of, there were three employes under the Telegraphers' Agreement classified as "Operators" working around the clock at the Passenger Station. There were five Clerks under the Clerks' Agreement employed at the Freight Station.

In September 1952, employes of the Carrier, called a Survey Committee, came to Dalton and made a study of the operation. At their direction, effective October 1, 1952, Carrier installed a fanfold billing machine and calculating machine in the Passenger Station and the Agent began to pick up bills of lading and waybills at the Freight Station, carry them to the Passenger Station, and require the Telegraphers to make waybills and freight bills (expensing) on the newly installed billing machine. After such work was done by the Telegraphers, the station copies were brought back to the Freight Station, where freight was delivered, and the records were completed by the Clerks and filed as permanent records.

The above work was specifically assigned to and performed by Claimants. Employees' Exhibit A-4 is a copy of Vacancy Bulletin advertising the position then held by Claimant Ray. Employees' Exhibit A-5 is a copy of Vacancy Bulletin advertising the position then occupied by Claimant May. It will be

numerous points on the system, and it has never been recognized as belonging specifically to employes of either craft. This has been the case not only at smaller stations where clerks are not employed, but also at countless points where both clerks and telegraphers are employed. In this connection, carrier calls attention to Rule 3 of the effective agreement, which reads:

“Rule 3—Effective Date (Revised, effective October 1, 1938)

This agreement becomes effective October 1, 1938, and supercedes and cancels all former agreements but does not, unless rules are specifically changed, alter practices or working conditions established by or under former agreements.”

This claim should be dismissed or denied for the reasons hereinbefore stated, and carrier respectfully requests that the Board so hold.

All pertinent facts and data used by the Carrier in this case have been made known to the employe representatives.

(Exhibits not reproduced)

OPINION OF BOARD: This claim was filed by Claimants R. V. Ray, Jr. and R. L. May on August 10, 1956 and denied by the highest designated officer of the Carrier's on February 26, 1957 because it was barred under Article V, Section 2 of the 1954 National Agreement. It is in substance the same claim that was filed by Claimant R. L. May, Jr. on November 20, 1954, and relates to the same occurrence that happened on October 1, 1952. The first claim of May was denied by the Carrier on February 23, 1955. After it was denied by the Carrier the Organization did not appeal the denial to this Division and the claim, therefore, became barred under Article V, Section 1(c) of the 1954 National Agreement because it had not been appealed to this Division within 9 months of the denial.

Claimant R. V. Ray, Jr. filed a similar claim with the Carrier on January 21, 1953 which claim was denied by the Carrier's highest designated officer on May 4, 1953. After the denial of that claim the Organization did not file an appeal with this Division and the claim, therefore, became barred under Article V, Section 2 of the 1954 National Agreement because no appeal was taken on the denial within 12 months of January 1, 1955.

The Organization states that under Article V, Section 3 this claim is not barred and is properly before this Board. Article V, Section 3 does not permit the refiling of claims that have previously become barred under other sections of the 1954 National Agreement even though they are alleged continuing violations.

This Board finds that the original claims presented the basis of complaint and the denial of them is controlling. A subsequent refiling of these claims after the time limit had expired does not give rise to a new proceeding, nor does it alter the decisions rendered by the Carrier on May 4, 1953 and February 23, 1955.

Consideration of this claim is barred by the terms of the time limit on claims rule and the claim must be and is hereby 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 Employes involved in this dispute are respectively Carrier and Employes 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 claim is barred by terms of Time Limit Rule.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.