

Award No. 10463

Docket No. TE-9294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert J. Ables, Referee

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY

THE ORDER OF RAILROAD TELEGRAPHERS

STATEMENT OF CLAIM: (4) Carrier's file O-162. Claim No. 707-513 by the General Committee of The Order of Railroad Telegraphers on the Chicago Great Western Railway that:

(a) the Carrier violated the terms of the Agreement between the parties when on September 16, 1953, it required the Telegrapher on duty at South Des Moines to call the crew of Extra 121 North and transmit a message to them to pick up 2 cars at Millman. The train was leaving Cumming at the time (4:45 P. M.) which is a point where no Telegrapher is employed and when the Carrier required or permitted the Crew of the Extra 121 North to copy this message of record for themselves, a message of record necessary to the safe and/or efficient operation of the railroad, it created a telegraph office at that point for that day. And, that:

(b) as a result of this violative act the Carrier shall now compensate the senior employe, idle that day on the Iowa Division seniority district, a minimum of eight (8) hours pay at the time and one-half rate and for whom such compensation is claimed.

EMPLOYEES' STATEMENT OF FACTS and POSITION OF EMPLOYEES: The above Carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this Carrier and this Organization which have not been handled to conclusion on the property and the right of this Organization to endeavor to settle them by further negotiations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the Agreement of August 21, 1954, has been challenged by the Carrier in the Courts.

It is, therefore, our position that until the Courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as amended, they are not properly referable to your Board. Four hundred and eighty copies of this submission are being forwarded under separate cover to accommodate each of your thirty two files.

CARRIER'S STATEMENT OF FACTS: The Carrier and The Order of Railroad Telegraphers are parties to National Agreement signed at Chicago,

Illinois, August 21, 1954, between participating Eastern, Western and South-eastern Carriers and Employees represented by the Fifteen Cooperating Railway Labor Organizations signatory thereto. Attached hereto as Exhibit "A" is reproduction of Article 5—Time Limit on Claims Rule (effective January 1, 1955) of that Agreement, and which is made a part hereof. Section 2 of said Article 5 reads in part:

"* * * in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred."

The instant claim was appealed to Personnel Officer D. K. Lawson (highest officer designated by the Carrier to handle claims and grievances) by O.R.T. General Chairman L. M. Kingsbury under date of December 7, 1953 and was declined in writing in Personnel Officer's letter to O.R.T. General Chairman Kingsbury dated April 7, 1954, i.e., claim was declined in writing prior to effective date (January 1, 1955) of Article 5 (Time Limit on Claims Rule). Consequently, the Employees had a period of twelve (12) months after January 1, 1955, or until January 1, 1956 in which to appeal to the appropriate board of adjustment before the claim herein became barred by the terms of Section 2, Article 5. No agreement was made nor was any understanding had by the parties hereto at any time, written, verbally or otherwise, with respect to extending the period in which the Employees could appeal to the appropriate board of adjustment. The Employees failed to appeal this claim to the Third Division, National Railroad Adjustment Board, prior to January 1, 1956.

POSITION OF CARRIER: There is a dispute between the parties hereto as to whether or not the claim herein is barred by the terms of the August 21, 1954 Agreement, Article 5, copy of which is attached hereto and made a part hereof—sole purpose of this ex parte submission is to resolve that dispute.

It may be noted from Carrier's Statement of Facts that the claim herein was denied by the Carrier's highest officer of appeal in letter dated April 7, 1954, and that by terms of Section 2, Article 5 of the August 21, 1954 Agreement, the Employees had a period of twelve (12) months after January 1, 1955 (effective date of said Article 5), or until January 1, 1956, in which to appeal to the appropriate board of adjustment before said claim became barred by the terms of Section 2, Article 5. The Employees failed to exercise their prerogative of appealing the claim herein to the appropriate board of adjustment on or before January 1, 1956, and due to that failure it is the Carrier's position and evidence is conclusive that the claim herein is now barred by the terms of Article 5 of the August 21, 1954 Agreement, and is null and void. The Third Division, National Railroad Adjustment Board, is, accordingly, requested to so find and deny the payment of this claim.

Exhibit "A" is attached hereto and made a part hereof as if fully set forth herein.

(Exhibits not reproduced.)

OPINION OF BOARD: This case is the same as in Award 10460, in all material respects. For the reasons stated in that award, this claim should be 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 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 claim is barred by Section 2 of Article V of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois this 29th day of March 1962.