

Award No. 10482

Docket No. TE-9313

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: (23) Carrier's file 0-221. Claim No. 707-252 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 May 5, 1955, it required or permitted the Conductor of Work Extra Y-45, a person not covered by the agreement, to copy for his train, Train Order No. 66 at Cumming, a closed station, thus creating a train office at that point on that day. And:

(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 in the amount of eight (8) hours pay at the straight time 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 Employes 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 1(c) of said Article 5 reads in part:

"All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said Officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may be agreement in any particular case extend the 9 months' period herein referred to."

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 August 2, 1955, and was declined in writing in Personnel Officer's letter to O.R.T. General Chairman Kingsbury dated August 18, 1955. Consequently, the Employees had a period of nine (9) months from August 18, 1955, or until May 18, 1956, in which to appeal to the appropriate board of adjustment before the claim herein became barred by the terms of Section 1(c) of 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 May 18, 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 August 18, 1955, and that by terms of Section 1(c), Article 5 of the August 21, 1954 Agreement, the Employees had a period of nine (9) months from August 18, 1955, or until May 18, 1956, in which to appeal to the appropriate board of adjustment before said claim became barred by the terms of Section 1(c), Article 5. The Employees failed to exercise their prerogative of appealing the claim herein to the appropriate board of adjustment on or before May 18, 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, except that the claim was filed on August 2, 1955 and declined by the highest designated officer of the Carrier on August 18, 1955, each date being subsequent to the effective date of the National Agreement

of August 21, 1954. Under Section 1(c) of Article V of the Agreement, the Employees had 9 months, or until May 18, 1956, to perfect an appeal to this Division. Since no such appeal was taken and for the reasons stated in Award 10460, 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 1(c) 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.