

Award No. 10807
Docket No. CL-10572

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

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

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

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

(1) The terms of the current Agreement were violated when Carrier refused to negotiate in accordance with the provisions of Rule 21 the rights of employes directly and indirectly affected as the results of consolidating crew dispatching work which was moved from Seniority District No. 24, Office of Master Mechanic-Grand Junction, to Seniority District No. 21, Office of Superintendent-Grand Junction.

(2) That Messrs. Ream, Collins, Gowan, Fitzpatrick and Parker, and all other employes adversely affected by the violation of the Agreement, be compensated for all salary loss sustained retroactive for a period of sixty days from date this claim is filed.

EMPLOYES' STATEMENT OF FACTS: Under date of July 20, 1956, your Honorable Board rendered Award 7384 in Docket CL-7341. This Award held that Rule 21 of our Agreement was applicable to the transfer of certain crew dispatching work at Salida, Colorado from Seniority District No. 24 to Seniority District No. 21. The Employes had contended that Rule 21 was not applicable and filed time claims thereon, and requested your Honorable Board to order the Carrier to restore the work to the former district and employes. In Award 7384 your Honorable Board denied Employes' contention and held that Rule 21 was applicable and that when Employes refused to negotiate, the claims failed.

After Award 7384 was rendered, the Employes gave serious consideration to the implication thereof and under date of May 31, 1957, addressed a communication to Mr. E. B. Herdman, Director of Personnel, requesting the Carrier to negotiate the rights of employes directly and indirectly affected by the transfer of work as contemplated by Rule 21, (Employes' Exhibit No. 1.).

First, it was the Organization, not the Carrier, who refused to negotiate the transfer of work under the provisions of Rule 21 of the current Clerks' Agreement and the Organization chose to submit claims which were continuing claims and denied in your Award 7384.

Second, it appears that because the interpretation of Award 7384 requested by the Organization did not give them what they desired, they are submitting the instant claim in an effort to secure the desired interpretation.

Third, the instant claim, with the exception of the date salary loss began, is identical to the claim which was denied in Award 7384.

Fourth, the claim denied in Award 7384 was a continuing claim in that it read "so long as this violation continues" and your Honorable Board held that claim was denied, which would include the dates which are claimed herein.

Fifth, your Honorable Board has already denied the instant claim in its Award No. 7384.

Claim must be denied.

All data in support of Carrier's position have been presented to the Employees and made a part of the particular question in dispute. The Carrier reserves the right to answer any data not heretofore presented by Employees.

OPINION OF BOARD: This is a dispute between The Brotherhood of Railway and Steamship Clerks and The Denver and Rio Grande Western Railroad Company.

In March of 1954 the Carrier transferred crew dispatching work from one seniority district to another. At that time the Carrier wanted to negotiate under the terms of Rule 21 of the Agreement. The Claimants herein refused and filed Claim No. 7341. This Claim resulted in Award 7384 which denied the claim.

The same claimants now have filed the instant claim.

Claim:

"Claim of the System Committee of the Brotherhood that:

(1) The terms of the current Agreement were violated when Carrier refused to negotiate in accordance with the provisions of Rule 21 the rights of employees directly and indirectly affected as the result of consolidating crew dispatching work which was moved from Seniority District No. 24, Office of Master Mechanic-Grand Junction, to Seniority District No. 21, Office of Superintendent-Grand Junction.

(2) That Messrs. Ream, Collins, Gowan, Fitzpatrick and Parker, and all other employees adversely affected by the violation of the Agreement, be compensated for all salary loss sustained retroactive for a period of sixty days from date this claim is filed."

In our opinion this is the same claim and therefore must be dismissed. This Board has adhered to the doctrine of Res Adjudicata.

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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1962.