

Award No. 11096
Docket No. TE-8294

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**UNION PACIFIC RAILROAD COMPANY
(EASTERN DISTRICT)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad, Eastern District, that:

(1) The Carrier has violated and continues to violate the terms of the Agreement between the parties, at "NY" North Platte, Nebraska, when and because it declined and continues to decline to assign to employees covered by said Agreement the duties of operating printing telegraph machines (teletype) used for transmitting and receiving communications of record;

(2) The Carrier shall forthwith assign all of the duties in connection with the transmission and reception of messages and reports of record by use of said printing telegraph machines (printers and/or teletype) to employees covered by said Agreement, and

(3) For each and every eight hour trick that printing telegraph (printers and/or teletype) have been operated by employees not covered by said agreement, the Carrier shall pay to the senior idle employee, (or employees) under the Agreement on the seniority district an amount equal to a day's pay at the rate prescribed in the Agreement for printer and teletype operators.

EMPLOYEES' STATEMENT OF FACTS: This is a resubmission of the dispute that reached your Board through Employees' notice dated April 27, 1951, Docketed as TE-5617, but was dismissed, by Award No. 6603, without prejudice, on the 7th day of May, 1954, without a decision being given on its merits. The Opinion, Findings and Award are quoted below:

"OPINION OF BOARD: Under all of the circumstances here obtaining, the claim should be dismissed without prejudice.

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

II.

CARRIER'S POSITION AS TO MERITS

Without prejudice to the position of the Carrier as to the jurisdictional aspects of this case, the Carrier submits that the claim is without merit in any event.

The merits of this case have been fully discussed by the Carrier in its submissions filed in Docket 5617, **Award 6603**. That record is readily available to the Board and we will not, in this submission, undertake to restate what was said there. All of the Carrier's submissions filed in Docket 5617 are incorporated herein by reference and made a part of **this docket**.

The Carrier has shown (1) that this Board is without jurisdiction to docket this case or to hear and determine it and (2) that in any event the claim here attempted to be presented is without merit.

All information and data contained in this Response to Notice of Ex Parte Submission are a matter of record or are known by the Organization.

Should the Board deadlock at any stage in the handling of this dispute, and should a referee be appointed to hear and determine such deadlock or dispute, Carrier respectfully requests permission to appear before, and present argument to, the Board with such referee sitting as a member thereof.

(Exhibits not reproduced.)

OPINION OF BOARD: The Claim in this case was filed previously with the Board [Docket No. TE-5617]. The succinct and entire Opinion of Board in that case, dated May 7, 1954, reads:

"Under all the circumstances here obtaining, the claim should be dismissed without prejudice."

In its Findings the Board said "That the claim should be dismissed without prejudice." The Award, being No. 6603, states:

"Claim dismissed in accordance with Opinion and Findings."

On the same day that Award No. 6603 issued, the Board issued Awards Nos. 6604 and 6605. In the latter two Awards the Opinion of Board was identical to that in Award No. 6603, set forth, above; also, each of those Claims was dismissed "without prejudice."

The Claim in Award No. 6604 was, later, again filed with the Board. The Carrier, in that case, raised the question as to the Board's jurisdiction to entertain the same claim after the Board had earlier dismissed it. In its Opinion, in Award No. 10516, in which it resolved the issue, the Board stated:

"It is now well established on the Third Division that the Board does not have jurisdiction to reconsider and/or rehear what in effect is the identical claim previously disposed of by the Board by a decision dismissing the claim 'without prejudice.'"

It found the claim was "barred" and issued its Award: "Claim dismissed."

Award No. 10516 is controlling precedent. We will, therefore, dismiss the Claim in the instant case.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the 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 present Claim is barred.

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 1963.