

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Herbert B. Rudolph, Referee

PARTIES TO DISPUTE:

W. R. REAVIS

MISSOURI PACIFIC RAILROAD COMPANY
(Guy A. Thompson, Trustee)

STATEMENT OF CLAIM: Claim of W. R. Reavis, Star Agent at Warrensburg, Mo., on the Missouri Pacific Railroad, that:

(1) The Carrier violated Rule 2 (f-2) of an agreement in effect between the Carrier and the Order of Railroad Telegraphers General Committee of Division 31, on the Missouri Pacific Railroad, both the employe and the Carrier being bound by the provisions of this agreement; said violation being the arbitrary and improper reclassification of the Star Agent position at Warrensburg to that of Star Agent Telegrapher, without conference with the General Committee or other agreement, and that:

(2) By reason of this improper reclassification, employe, W. R. Reavis, employed as Star Agent at Warrensburg, Mo., was required to sell tickets, OS trains and handle train orders without additional compensation therefor as provided by Rule 10 (g) of the agreement and that employe is entitled to additional compensation for the performance of these extraordinary duties for the whole time required to perform same.

OPINION OF BOARD: The issue presented is whether this Board should docket, hear and determine this controversy presented by petitioner. Petitioner is an individual who asserts a claim against the carrier, which claim he contends finds support in the agreement between the Order of Railroad Telegraphers and the Carrier. It appears without dispute that at the request of petitioner this claim was handled on the property by the Order of Railroad Telegraphers of which petitioner is local chairman. The claim was progressed to the Chief Personnel Officer of the Carrier where it was finally declined by letter dated July 11, 1946, addressed to the General Chairman of the Order of Railroad Telegraphers. Subsequent events are disclosed by petitioner's letter of November 7, 1946, addressed to this Board. The letter states:

"On February 4, 1946, a dispute developed between Division 31 of the Order of Railroad Telegraphers and the Missouri Pacific Railroad Company as to the proper interpretation of the classification rule of the presently effective agreement. This dispute was appealed through the regular channels, as provided by both the Railway Labor Act and the agreement between the parties, up to and including the Chief Personnel Officer of the railroad. No agreement was effected and the dispute was then referred to Mr. G. E. Leighty, President of the Order of Railroad Telegraphers, for his authority and approval to submit the dispute to your Board for final decision. Mr. Leighty requested that the dispute be referred to the General Committee of Division 31, which was done, and this committee voted

9 to 6 in favor of submitting the dispute to the Board. Mr. Leighty then ruled the dispute (or claim) did not have sufficient merit to justify submission and declined to approve submission to the Board."

It further appears that Mr. Leighty was acting within his authority as granted by the union, and that petitioner had a right of appeal within the organization from Mr. Leighty's decision, which he did not exercise. In the light of these facts it appears that this claim was progressed by the organization at the request of the petitioner, at the end of negotiations the organization through its duly constituted representative accepted the Carrier's declination of the claim, and concluded that under its agreement with the Carrier the claim was without merit. We believe this action disposed of the claim on the property; as stated by Mr. Leighty in his letter to this Board dated April 19, 1947, "There is no dispute between the Order of Railroad Telegraphers and the Missouri Pacific Railroad on the question raised here by Mr. Reavis." It is only where the parties fail "to reach an adjustment" upon the property after handling in the usual manner that disputes may be referred to this Board. Railway Labor Act, Section 3 (i).

We believe it would be contrary to the purpose and spirit of the Railway Labor Act for this Board to accept and hear this petition when it appears that the claim has been progressed to final determination on the property by the union under authorization of petitioner. The Supreme Court in its opinion on rehearing in the case of *Elgin, Joliet and Eastern Railway Company v. Burley et al.*, No. 160, October Term 1944, stated, "We did not rule, and there is no basis for assuming that we did, that an employe can stand by with knowledge or notice of what is going on with reference to his claim, either between the Carrier and the Union on the property, or before the Board on their submission, allow matters to be thrashed out to a conclusion by one method or the other, and then come in for the first time to assert his individual rights." Here the petitioner had full knowledge of all proceedings, in fact they were at his solicitation and request, the matter was thrashed out to a conclusion on the property. True, the result finally reached was not in petitioner's favor, but the claim was thrashed out to a conclusion nevertheless, and it follows he cannot now come in for the first time to assert his individual rights before this Board.

FINDINGS: The Third Division of the Adjustment Board finds and holds:

That there is no existing dispute over which this Division of the Adjustment Board has jurisdiction.

AWARD

Jurisdiction denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 14th day of July, 1947.