

Award No. 8140

Docket No. TE-7667

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Coast Lines)**

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Atchison, Topeka & Santa Fe Railway Company, that:

(1) The Carrier has violated and continues to violate the provisions of the Agreement between the parties when and because it has declined and continues to decline to assign to employees covered by the said Agreement the duties of operating printing telegraph-machines and machines used for transmitting or receiving messages, reports and similar communications located in Division Freight Agent's Offices at Stockton and Oakland, California, and all auxiliary machines used to reperfurate tape in a secondary operation which transmit or receive such communications, and

(2) The Carrier shall be required to forthwith assign all such duties to employees covered by the Telegraphers' Agreement; and that

(3) For each and every eight hour shift that these printing telegraph, and/or reperfurators have been or may be operated by employees not under the Agreement, the senior idle extra employees under the Telegraphers' Agreement shall be paid by the Carrier a day's pay at the rate of pay applicable to the particular location.

EMPLOYEES' STATEMENT OF FACTS: Agreements bearing effective dates of December 1, 1938 and June 1, 1951, between the parties are in evidence.

This dispute deals with the installation of printing telegraph machines in two separate offices on the same seniority district; namely, Stockton and Oakland, California and the subsequent transfer of work previously performed by employees under the Telegraphers' Agreement to employees not so covered to be performed by means of the printing telegraph machines. The facts in connection with each of the respective locations are as follows:

Oakland, California

The Carrier maintains a telegraph office in its station at Oakland, California known as "KD" telegraph office. Its Division Freight Agent's office

In conclusion, the Carrier reasserts that the instant dispute **should be either dismissed or denied in its entirety for the following reasons which are amply supported by the record:**

(1) The National Railroad Adjustment is without authority to consider or determine the dispute, which clearly involves a long-standing jurisdictional question on the Carrier's property.

(2) The dispute is one which may only be resolved by negotiation and tri-party agreement between the respondent Carrier, The Order of Railroad Telegraphers and the Brotherhood of Railway and Steamship Clerks.

(3) The handling complained of is not violative of any rule of the Telegraphers' Agreement, hence the Employees' claim is entirely without support under the provisions thereof relied upon by the Employees.

(4) The Employees' long delay in pressing their claim in the instant dispute to a final conclusion by means of an appeal thereof to the Third Division requires its denial.

All that is herein contained has been both known and available to the employees and their representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: In November, 1939, the Carrier installed a teletype machine (the Employees call it a printing telegraph machine) in its freight office at Oakland, California, and assigned its operation to clerical employees at that office. In May, 1940, the Carrier installed a similar machine in its freight office at Stockton, California, and likewise assigned its operation to clerical employees. The Telegraphers' Organization promptly filed claims (which were later consolidated) with the Carrier requesting that operation of said machines be assigned to employees under the Telegraphers' Agreement. On October 1, 1942, the Carrier's highest officer for handling such claims refused the Organization's request, asserting that the request involved a jurisdictional dispute. **Over twelve years later** the Organization gave this Division notice of intent to file an ex parte submission covering the Claim. This long delay between the last serious handling of the Claim on the property and its submission to this Division clearly requires the Division to refuse to accept jurisdiction thereof unless compelled to accept jurisdiction by virtue of Article V of the August 21, 1954 National Agreement.

The existence of said National Agreement has led this Division to accept jurisdiction of several cases that otherwise might have been held barred for reason of unreasonable delay. See Awards 7593, 7833, 7959, 7961, 8040, 8043 (the latter two by the present Referee). In none of these cases, however, was the time gap between the most recent handling on the property and submission to this Division more than approximately five years. While the Railway Labor Act places no specific time limit on the progressing of claims, numerous awards not involving the 1954 National Agreement have approached the time element on the basis of what is reasonable under all the circumstances. This still should be done. But now one of the possible "circumstances" is existence of the 1954 National Agreement. That Agreement is only one of the circumstances to be considered, however—it is not necessarily conclusive upon this Division. Its existence and applicability do justify the Division in accepting jurisdiction of some cases that otherwise might be rejected. But somewhere there must be an end. Where the line is ultimately to be drawn we will not assume to say here, but it is certain that a gap of twelve years cannot be tolerated. Such a long delay is so obviously unreasonable that the parties to the 1954 National Agreement cannot be deemed to have intended to allow it. Indeed, even if the 1954 National Agreement had specifically and literally stated that a twelve-year delay should not be fatal, it still might be doubted that private parties should be

permitted by private contract to obligate this Division to disregard totally the Railway Labor Act's objective of prompt and orderly settlement of disputes. That objective necessarily will be frustrated unless parties make serious effort, within a reasonable time prior to coming to this Division, to settle the dispute on the property. Moreover, the inherent objective of the Act's mandate that disputes be handled on the property as a condition precedent to the exercise of jurisdiction by the National Railroad Adjustment Board cannot reasonably be met where a wide gap of twelve years separates the last handling on the property from the submission of the dispute to the Board. The present Claim must be dismissed.

Since the dispute involved herein concerns a "continuing" activity the Award herein goes no further than to hold that the Division refuses to accept jurisdiction to rule upon the teletype assignments in the Oakland and Stockton freight stations from 1939 to the date of the Award.

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 herein; and

That the Claim should be dismissed in accordance with Opinion.

AWARD

Claim dismissed in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1957.