

Award No. 9376

Docket No. CL-8137

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Mortimer Stone, Referee

PARTIES TO DISPUTE:

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

SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Rules and provisions of the Clerks' Agreement,

(a) When on March 30, 1951, it arbitrarily and unilaterally abolished the position of Cashier at the freight station at Wadesboro, North Carolina, and assigned the duties and work of this position to an employe not covered by the Clerks' Agreement, thereby removing the duties and work of the Cashier's position from the scope of said Agreement.

(b) That the position of Cashier at Wadesboro, North Carolina, be restored to the scope of the Clerks' Agreement.

(c) That each employee affected by this violation, holding Operating Department seniority on the Clerical Seniority Roster of the Georgia Division as of August 21, 1951, shall be compensated for all losses sustained resulting therefrom.

(d) This is made for July 23, 1951, and subsequent thereto, until this work is returned to an employe covered by the Clerks' Agreement or the position is returned to the scope thereof.

(e) That interest at the legal rate of the State of North Carolina be allowed on the above claim from July 23, 1951, and subsequent thereto, compounded quarterly, until this violation is corrected as above.

(f) Time worked on this position and amounts earned to be determined from the Carrier's records.

EMPLOYEES' STATEMENT OF FACTS: This is a re-submission of dispute originally submitted to your Board on September 26, 1952, covered by Docket CL-6405. On February 11, 1954, in Award 6483, the following Opinion, Findings and Award were issued:

Award: Claim denied."

First Division Award 15677 also involves the same parties, with the same Referee and the same rules as mentioned in the next three above awards and under the Findings it was stated:

"However, the carrier asserts that this claim is barred because it was not filed for final disposition within the year allowed under the contract of December 12, 1947. It is true that a conference was held less than one year prior to the filing, but the contract is plain and where pleaded under facts showing a non-compliance with the contract, it must be sustained.

Here, the evidence shows the failure to comply, and the determination of the highest officer authorized to handle claims was final. The claim must be denied for failure to file the same within one year of the declination of the highest officer on the property who was authorized to handle claims.

Award: Claim denied."

Under Rule 36(b) Director of Personnel McRee's letter of October 2, 1951 became final and binding on October 2, 1953 and bars the claim from further handling because it was not disposed of on the property or proceedings for the final disposition thereof instituted within two years from the date of declination.

Carrier affirmatively states that all data used herein has been discussed with or is well known to organization representative.

(Exhibits not reproduced.)

OPINION OF BOARD: This docket is a resubmission of former Docket CL-6405 which was submitted to the Division on September 26, 1952. Thereafter on finding that it had no jurisdiction over persons involved herein who have not been given notice of the hearing, the Board rendered an award on the 11th day of February, 1954 as follows: "Claim dismissed without prejudice and in accordance with the Opinion and Findings."

The award of dismissal, whether or not it was improper, was a final determination of want of jurisdiction and a final disposition of the claim. Having been so dismissed the same claim cannot again be submitted to the Board. Had action been to defer the claim as in Award 8220, then it could and should have been brought up again for determination but such was not the case here. It cannot be brought up as a new claim since as urged by Carrier, it is now barred by the time limit rule.

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 Board is without jurisdiction to entertain the claim.

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 April, 1960.