

**Award No. 9377**

**Docket No. CL-8138**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Mortimer Stone, Referee**

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**PARTIES TO DISPUTE:**

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

**SEABOARD AIR LINE RAILROAD COMPANY**

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

(1) The Carrier violated and continues to violate the current Agreement between the parties, effective August 1, 1945, and subsequent amendments, when it removed clerical work from the scope thereof and reassigned such work to the Agent and Telegraphers, employees not covered by the scope of the Clerical Agreement, at Fort Lauderdale, Florida, prior and subsequent to the abolishment of a scheduled position of Bill Clerk of April 16, 1949, and

(2) Cashier E. M. Woodall, Sr., shall be compensated for two hours at the time and one-half rate of his regular position for November 10, 1950, and for each date subsequent thereto until all the clerical work is restored to the Clerks' Agreement, and

(3) As a penalty, the Carrier shall be required to reimburse all other employees adversely affected for all wage loss sustained and expenses incurred account of the violation in the removal of clerical work from the scope and application of the Clerks' Agreement, such claim to run until the condition has been corrected by the assignment of such work to employees under such Agreement, and

(4) That a joint check of the Carrier's records be made by the parties for the purpose of ascertaining the extent of the violation after April 16, 1949.

**EMPLOYEES' STATEMENT OF FACTS:** This is a re-submission of dispute originally submitted to your Board on March 2, 1953, covered by Docket CL-6600. On November 29, 1954, in Award 6812, the following Opinion, Findings and Award were issued:

**OPINION OF BOARD:** The essential facts in connection with this claim appear to be as follows:

The Carrier maintains a Freight and Passenger Station at Fort Lauderdale, Florida. The freight station and the passenger station are about 800 feet

because it was not instituted before the expiration of one year from the date of declination. The declination thus became final.

Award: Claim denied."

First Division Award 15674 involved the same parties and the same rules mentioned in Award 15671 and 15673 with the same Referee and under the Findings it was stated:

"No facts have been disclosed by the carrier excepting those facts which relate to the plea that the claim is barred under the contract which causes the decision, of the highest officer, authorized by the carrier to handle claims to become final unless within a year therefrom steps are taken to finally dispose of the matter.

It is shown that the declination was made on March 3, 1949; that the appeal date was August 18, 1950, and that the conference was held on January 20, 1950. No extension of time is shown.

Because proceedings for the final disposition were not commenced within one year from the time of the declination, the claim cannot be considered on the merits and must be denied.

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's letter of July 12, 1951 became final and binding on July 12, 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.

**OPINION OF BOARD:** This claim is a resubmission of a claim formerly submitted to the Board on March 2, 1953, covered by Docket CL-6600. On November 29, 1954 the claim was considered and in Award 6812 on an opinion concluding that "we are without jurisdiction to decide this claim on the merits" and finding that "the claim should be dismissed without prejudice for the

reasons set forth in the foregoing Opinion of Board", the claim was dismissed without prejudice.

The award of dismissal, whether or not it was proper, 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, and it cannot be brought up as a new claim since, as urged by the 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 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.