

Award No. 9453

Docket No. TE-8010

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William E. Grady, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Lehigh Valley Railroad that:

1. The Carrier has violated and continues to violate the provisions of the Agreement between the parties, when and because it declined, and continues to decline, to assign to employees covered by the said Agreement the duties of operating teletype and other mechanical machines used for transmitting and/or receiving communications of record; and

2. The Carrier shall be required to forthwith assign such operation to employees covered by the Agreement.

EMPLOYES' STATEMENT OF FACTS: This is a resubmission of the dispute which reached your Board on October 6, 1950, covered by Docket TE-5442. On the 6th day of September, 1951, in Award 5433, the following Opinion and Findings were issued:

"OPINION OF BOARD: For all essential purposes the claim, the factual situation and the decisive principles involved in this case are the same as those involved in Award 5432, this day adopted. What is there said and held with respect to dismissal of the claim because of failure to give proper notice to all parties whose rights might be affected by the decision is decisive and controlling here. Therefore, based on what is said and held in the Opinion of Award 5432 we hold the instant claim should be dismissed without prejudice and it is so ordered.

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

"That both parties to this dispute waived oral hearing thereon;

OPINION OF BOARD: This claim, filed August 15, 1955, was filed previously (Docket No. TE-5442) and dismissed without prejudice on September 6, 1951 by Award No. 5433.

The dismissal was based on the ground that notice to the Brotherhood of Railway and Steamship Clerks was required by Section 3, First (j) of the Act and that notice had not been given.

The basic issue is the same as that presented in Docket No. TE-8068 and this claim will be dismissed for the reasons set forth in Award No. 9451 disposing of that docket.

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; 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 2nd day of June 1960.