Award No. 9506

Docket No. CL-9237

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Frank Elkouri, Referee

PARTIES TO DISPUTE:

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

THE LAKE TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the rules of the Clerks' Agreement at Lorain, Ohio when on July 23, 1954, August 2, 12, 13, 27, September 2, 3, and 10, 1954 employes not covered by the Clerks' Agreement were permitted to perform work covered thereby, denying the employes covered the right and opportunity to perform the work attaching to their positions, and

That the Carrier shall now compensate Employes R. J. Teaman, E. Sensback and John W. Stone for a day's pay each at time and one-half rate for each day's violation of the Clerks' Agreement and on all subsequent dates until violation complained of is corrected. (Claim LT-26)

EMPLOYES' STATEMENT OF FACTS: On July 23, 1954 while Yard Dispatcher Teaman was absent from the yard office doing messenger work attaching to his position, Yardmaster Filbert answered the telephone, taking switch orders from the Lorain Slag Company and also marking the crews to lunch and called them from lunch, working attaching to and an integral part of the Yard Dispatcher's assignment.

On August 2, 1954 while Yard Dispatcher Sensback was away from the yard office on his way to the North Side to get orders from the East Yard Office, Yardmaster McGeachie took switch orders over the phone from the Lorain Slag Company, work attaching to and an integral part of the assignment of Yard Dispatcher, position held by E. Sensback.

Similar occurrences on Mr. Teaman's position took place on August 13, 27, September 3 and 10, 1954, when Assistant Trainmaster Wallace performed the messenger work attaching to Mr. Teaman's position.

A similar occurrence on Mr. Sensback's position took place on August 12, 1954 when Yardmaster Good brought orders from the North Side #6 Scale to East Yard Office while Mr. Sensback was at the B&O West Yard and biling office.

On September 2, 1954 a similar occurrence took place on position of Yard Dispatcher held by Mr. Stone when Yardmaster McGill performed messenger's

and the same data and material arguments are presented as were presented in the previous case, the Award in the previous case should be followed * * * * *. For in such a situation there is nothing new which has not been passed upon and taken into account before, and the only question is whether the personal judgment of the latter referee * * * * * should be substituted for that of the former referee.'

"A contrary course would tend to discourage settlements, between the parties and discourage prompt compliance with Awards rendered."

The Board in that Award held "That the within dispute is governed by our holding in Award 6487, the issue being identical."

To the same effect see decision of this Division in its Award No. 6935 from which we quote:

"If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdictional grounds."

The Awards referred to above are entirely consistent with the mandate of the Railway Labor Act, as amended, in Section 3, First, Paragraph m:

"(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and **the awards shall be final and binding upon both parties to the dispute,** except in so far as they shall contain a money award. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute." (Emphasis ours).

For the foregoing reasons, it is respectfully submitted that this claim must be dismissed.

It is hereby affirmed that all data submitted in support of the Carrier's position have been submitted in substance to the employes or their duly authorized representatives and made a part of the particular case in dispute.

(Exhibits not reproduced)

OPINION OF BOARD: Third Division denial Award 7426 involves the same parties, rules and issue involved herein, and by virtue of that Award the present case must be dismissed. Employe Exhibits SB-#3 through SB-#18 in the present case are new evidence not handled on the property and cannot be considered by the Board.

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 Employes involved in this dispute are respectively Carrier and Employes 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 claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of July 1960.