

Award No. 10020

Docket No. TE-8237

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

**Martin I. Rose, Referee**

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**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**GULF, MOBILE AND OHIO RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Gulf, Mobile & Ohio Railroad (Northern and Southern Division), that:

(a) The Carrier violated the prevailing Telegraphers' Agreement dated March 1, 1929, particularly the Scope Rule and Rule 3(a) thereof, when on June 18, 1949, the carrier acting alone, reclassified the position of agent at Artesia, Mississippi, to agent-operator, and removed from the agreement and from said agent the clerical work formerly performed by him and assigned said clerical work to positions not under the Telegraphers' Agreement, occupied by employees who perviously had never performed the work now being removed from the scope of the Telegraphers' Argeement.

(b) The Carrier violated the terms of the prevailing Telegraphers' Agreement when, acting alone, it discontinued the position of first trick telegrapher at Artesia, Mississippi, and assigned all the work of the position to the improperly reclassified position of agent-operator.

(c) The position of agent and the position of first trick telegrapher at Artesia shall be restored to the Telegraphers' Agreement and all employees adversely affected by these violative acts of the carrier shall be restored to their former positions and be compensated for any wage loss suffered and in addition reimbursed for any expense incurred by reason of carrier's acts recited above.

**EMPLOYEES' STATEMENT OF FACTS:** The agreements between the parties to this dispute are on file with this Division of your Board and by this reference are made a part hereof.

Artesia, Mississippi, is a terminal point where the Montgomery and Starkville Branches join the main line. Prior to June 18, 1949, the carrier maintained the following force at Artesia, covered by the Telegraphers' Agreement:

Agent	8:00 A. M. to 5:00 P. M., with 1 hour for lunch
1st trick telegrapher	8:00 A. M. to 4:00 P. M.
2nd trick telegrapher	4:00 P. M. to 12 midnight
3rd trick telegrapher	12 midnight to 8:00 A. M.

In addition to the above listed employees, there were employed at Artesia six clerks and twelve truckers who were engaged in yard work and in the trans-

In Award 6402—Referee Donald F. McMahon stated:

"It is therefore the Opinion of the Board that no conclusive evidence has been produced to show any violation of the Agreement as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper."

In Award 6648, Referee Norris C. Bakke stated:

"The burden is on Claimant to establish his claim."

In Award 6650, Referee LeRoy A. Rader stated:

"And we find merit in the presentation made on behalf of Carrier in the matter of past practice, and no showing on behalf of Petitioners of sufficient force to refute the same and therefore conclude that the burden of proof necessary to establish these claims has not been met." (Emphasis ours.)

In Award 6673, Referee Francis J. Robertson stated:

"The burden of showing sufficient facts to establish a violation of the Agreement rests with the Employes as asserting parties." (Emphasis ours.)

In Award 6698, Referee J. Glenn Donaldson stated:

"The burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance (Awards 4011, 3393, 3473, 2577 and others)."

Many other awards can be cited, upholding this same principle. Compare these statements to the instant case where the Employes have not submitted a scintilla of evidence to in any way indicate that there is any justification for the claim in this case. On the contrary, the Carrier has shown, by the actions of the parties to the contract, supported by written evidence, as well as the contract itself, that the claims are not justified.

**CONCLUSION:** The claim should be denied because of the unconscionable delay of over five years in appealing the claim to this Board. It should be denied because the claim and the claimants are vague and indefinite and impossible of ascertainment. The claim should also be denied because it is totally lacking in merit.

Carrier reserves the right to make an answer to any further submission of the Organization.

(Exhibits not reproduced.)

**OPINION OF BOARD:** This case presents a continuing claim which arose on June 18, 1949 and was submitted to the Carrier by letter dated July 5, 1949. Final declination on the property was made by the Carrier's letter dated February 27, 1950. On December 30, 1955, this Division received the Employes' notice of intention to file ex parte submission which was dated December 29, 1955. No explanation is made for this delay of about five years and ten

months in progressing the claim to the Board, and the record does not disclose any mitigating circumstances for such delay.

A stated purpose of the Railway Labor Act is "to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules or working conditions." The August 21, 1954 National Agreement could not defeat the congressional intent, and there is no reason to believe that the parties to that Agreement contemplated such a result. The unexplained delay of more than five years in taking this appeal was clearly unreasonable. Since the Employees slept on their rights for so long, and no justification for this Board to revive it appears, the claim should be dismissed. See Awards 7074, 7135.

**FINDING:** 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 the claim should be dismissed for the reasons stated in the Opinion.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1961.