

Award No. 10453

Docket No. TE-9351

NATIONAL RAILROAD ADJUSTMENT BOARD

**THIRD DIVISION
(Supplemental)**

Robert J. Wilson, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Chicago, Burlington and Quincy Railroad that:

1. Carrier violated the agreement between the parties at Anselmo, Mullen and Lakeside, Nebraska, when, commencing January 14, 1956, it permitted or required track supervisors operating track motor cars, who are not employes covered by the Telegraphers' Agreement, to copy train lineups at a time that the agent-telegrapher was not on duty at these stations.

2. Carrier shall pay the occupants of the agent-telegrapher positions at Anselmo, Mullen and Lakeside a "call" payment commencing January 14, 1956, and continuing on each subsequent Saturday and holiday until the violations are corrected.

EMPLOYES' STATEMENT OF FACTS: The agreements between the parties to this dispute are available to your Board and by this reference are made a part hereof.

nselmo, Mullen and Lakeside are stations located on the Alliance Division of th Carrier. At each station there is one position under the Telegraphers' Agreement classified as Agent-Operator with work days Monday through Friday and rest days Saturday and Sunday. The positions are not filled on rest days and holidays. Assigned hours at Anselmo, 7:00 A. M. to 4:00 P. M.; Mullen, 7:00 A. M. to 4:00 P. M.; Lakeside, 6:00 A. M. to 3:00 P. M., each with a one-hour meal period. At the time cause for this claim began S. E. Stewart was regularly assigned to the position at Anselmo; G. L. King at Mullen, and A. J. Hamilton at Lakeside.

Carrier maintains positions of track supervisors to patrol the track. As of January 14, 1956, Track Supervisor Dickey, with headquarters at Anselmo, patrolled between Anselmo and Mullen, travelling westward on Mondays, Wednesdays and Fridays, and eastward on Tuesdays, Thursdays and Saturdays. Supervisor Kirkpatrick, with headquarters at Ravenna, patrolled between Ravenna and Anselmo, travelling westward on Mondays, Wednesdays and Fridays, and eastward Tuesdays, Thursdays and Saturdays. Supervisor Van

visions of Section 1(c), Article 5 of the August 21, 1954 Agreement. It is a dead claim and the Board has no authority to docket it. It must be dismissed.

(2) Rules, tradition, historical practices and circumstances in this case are on all fours with awards cited herein, and for the reasons given in those awards, the instant claim must be denied.

(3) Petitioner's action in attempting to amend the scope rule, both before and after the effective date of the current agreement, can lead only to the conclusion that the claim is without support, contractually or otherwise.

(4) Petitioner's action in permitting 61 lineup claims to expire under the time limit rule, is clearly evident of the fact that Petitioner agreed the schedule did not and still does not include the handling of lineups.

With these facts before it, the Board must either dismiss the claim for lack of jurisdiction, or deny it in its entirety for lack of merit.

* * * * *

The Carrier affirmatively states that all evidence herein and herewith submitted has been previously submitted to the Employees.

(Exhibits not reproduced)

OPINION OF BOARD: On February 1, 1952, Local Chairman King representing telegraphers on the Alliance Division filed claim in behalf of the agent at Mullen, Nebraska for a call on Saturday, December 1, 1951, and each Saturday and holiday thereafter, when the Track Supervisor received lineups from the telegraph operator at Seneca, Nebraska.

On May 14, 1953 Local Chairman King also filed claim on behalf of the agent at Anselmo, Nebraska, for a call on Saturday, May 9, 1953, and each Saturday and holiday thereafter, when the Track Supervisor secured lineup from the telegraph operator at Broken Bow, Nebraska.

Likewise on May 14, 1953, Local Chairman King filed claim on behalf of the agent at Lakeside, Nebraska, for a call on May 9, 1953 and for each Saturday and holiday thereafter when the Track Supervisor secured lineup from agent at Seneca, Nebraska.

These claims were handled through the regular channels of appeal on the property and were declined in each step including the highest officer designated to handle grievances.

On December 29, 1955, the Organization wrote a letter to this Board advising that it intended to file in ex parte the unadjusted dispute existing in regard to the two claims at Lakeside and Anselmo, Nebraska. These apparently were included in one claim.

The Carrier in a letter to the Organization dated January 3, 1956 pointed out that the claim was barred under Section 1(c) of Article V of the August 21, 1954 Agreement between the parties.

Under date of January 1956, in a letter to the Board the Organization withdrew the claim.

On March 14, 1956, Local Chairman King filed the present claim in behalf of the Agent Telegraphers at Anselmo, Mullen and Lakeside, Nebraska, for a call on January 14, 1956 and each Saturday and holiday thereafter that a Track Supervisor secured lineup at those stations.

The Carrier takes the position that the claim is not properly before this Board because it is a refiling of the previous claims which were barred under Section 1(c) of Article V, of the August 21, 1954 Agreement between the parties. Section 1(c) of Article V reads as follows:

"The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest designated officer shall be barred unless within 9 months from the date of said officer's decision proceedings are instituted by the employe or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in Section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the 9 months' period herein referred to."

It has been held by this Board that continuing claims are not open to refiling under Article V of the August 21, 1954 Agreement between the parties. See Awards 9447 and 10251.

This Board has carefully analyzed the record, in this case and it is our opinion that the claim here involved is nothing more than a refiling of claims previously submitted for the same Claimants which claims were processed through the prescribed procedures and withdrawn by the Petitioner.

It is our decision that the claim is barred as a result of Section 1(c) of Article V of the August 21, 1954 Agreement.

Therefore the Board is without authority to make a decision on the merits.

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