

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

J. Harvey Daly, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

CHICAGO, MILWAUKEE, ST. PAUL AND
PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Order of Railroad Telegraphers on the Chicago, Milwaukee, St. Paul and Pacific Railroad, that:

1. The Carrier violated the agreement between the parties when, effective April 15, 1950, it declared abolished the position of third trick operator (Position No. 75) at Chillicothe, Missouri, and transferred the work of this position to an employe not subject to said agreement.

2. The third trick operator position at Chillicothe shall be restored, the work of said position returned to the agreement, and the former incumbent of the position restored thereto and compensated for any loss in salary plus expenses incurred by reason of the violative act; and

3. All other employes who were improperly displaced shall be restored to their respective positions and compensated for loss of wages and expenses incurred as a result of this violative act.

EMPLOYEES' STATEMENT OF FACTS: An agreement bearing date of September 1, 1949, is in effect between the parties to this dispute. Prior to April 15, 1950, the Carrier maintained three positions at Chillicothe, Missouri, covered by the Telegraphers' Agreement. Those positions were listed under Rule 26, Wage Scale of the 1949 Agreement as follows:

Station	Title	Hourly Rate
Chillicothe	A.	\$1.72
Chillicothe	2nd Opr.	1.55
Chillicothe	3rd Opr.	1.53

These basic rates of pay have since been increased above the 1949 listing. The positions were incorporated into the agreement many years ago and have continued in effect up to April 15, 1950, when the third shift operator was

delay by the employees in submitting this dispute to your Board gives credence to the position taken by the carrier herein.

The claim is entirely without merit and should be denied.

All data contained herein has been made known to the employees.

(Exhibits not reproduced.)

OPINION OF BOARD: On April 15, 1950, effective with the completion of the third trick Telegrapher's assignment on Position Number 75 at the Chillicothe Station, Missouri, the Carrier abolished that position.

The Organization's initial protest was answered by the Carrier's letter of May 4, 1950. Subsequent appeal steps were properly pursued and final declination on the property was made by the Carrier on June 7, 1950. Further correspondence and conferences occurred and ended with the Carrier's letter to the Organization dated July 2, 1951.

On December 29, 1955, the Organization wrote the Board of its intention to file with this Division an ex parte submission pertaining to this so-called unadjusted dispute.

The Organization offered no explanation for the delay of approximately five and a half years in progressing the claim to this Board—nor does the record reveal any extenuating conditions. Therefore, we can only conclude that the Organization was solely responsible for the delay.

Even the parties' correspondence and conferences, subsequent to the Carrier's final declination on June 7, 1950, ended on July 2, 1951, some four years and nearly six months before the Organization notified the Board of its intention.

The Railway Labor Act has established sound and orderly procedures for the disposition of all claims, grievances and disputes. One of the stated purposes of that Act is "to provide for the prompt and orderly settlement of all disputes." Even the most prejudicted observer would hesitate to say that the Organization sought a **prompt** settlement in this case. (Emphasis ours.)

In reaching our decision, we were not unmindful of the time limitation provisions of the August 21, 1954 National Agreement. However, the National Agreement cannot be used to set aside or thwart the congressional intention; nor is there reason to believe that the parties to the National Agreement contemplated such a purpose. Since the Organization unreasonably slept on its rights for so many years, we must dismiss this claim.

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 Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 25th day of April 1962.