

Award No. 12851  
Docket No. TE-10092

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

William H. Coburn, Referee

**PARTIES TO DISPUTE:**

**THE ORDER OF RAILROAD TELEGRAPHERS**

**UNION PACIFIC RAILROAD COMPANY**  
**Eastern District**

**STATEMENT OF CLAIM:** Claim of the General Committee of The Order of Railroad Telegraphers on the Union Pacific Railroad (Eastern District), that:

**Case No. 1**

1. Carrier violated the Agreement when, on the 7th of September 1956, 20th of September, 1956, 2nd of October, 1956 and 4th of October, 1956, it caused, required or permitted Mr. Felton, a train service employe not covered by the Telegraphers' Agreement, to handle (receive, copy and deliver) train orders, instructions, lineups and clearances at Walcott, Wyoming.
2. Carrier shall compensate the oldest, idle, extra telegrapher on Seniority District No. 2 on September 7, 1956, for one day (8 hours) at the rate of \$1.998 per hour, on September 20, 1956, for one day (8 hours) at the rate of \$1.998 per hour, on October 4, 1956, for one day (8 hours) at the rate of \$1.998 per hour, and October 2, 1956, for one day (8 hours) at the rate of \$1.998 per hour, for the violations aforesaid.
3. If the Carrier continues the violation set forth above, then compensation shall be paid to senior, idle, extra employe for each and every date of such violation. The names and amounts due to be determined by joint check of Carrier's records.
4. In case there are no idle, extra telegraphers then the oldest, idle telegrapher on his rest day shall receive compensation for the aforesaid violations.

**Case No. 2**

1. Carrier violated the Agreement when on the 3rd, 5th, 8th, 9th, 11th, 12th, 13th, 16th, 17th and 19th of October, 1956, it caused, required or permitted Conductor Felton, train service employe, to handle (receive, copy

and deliver) train orders, lineups, and clearances (forms of record) at Walcott, Wyoming.

2. Carrier shall compensate the oldest, idle, extra telegrapher or the oldest, idle, regular assigned telegrapher on seniority district No. 2 for one day's pay (8 hours) at the rate of \$1.998 per hour for each of the above stated violations. Telegraphers entitled to each of the aforesaid days are as follows: Oct. 3, A. E. McCabe, Oct. 5, A. R. Keever, Oct. 8, L. B. Crutcher, Oct. 9, A. E. McCabe, Oct. 11, P. A. Gobel, Oct. 12, D. G. Temple, Oct. 13, D. G. Temple, Oct. 16, A. E. McCabe, Oct. 17, A. E. McCabe and Oct. 19, A. R. Keever. Joint check between Carriers and Union shall be made to determine if above stated are correct.

### Case No. 3

1. Carrier violated the Agreement when, on the 22nd of October, 1956 and the 2nd of November, 1956, it caused, permitted or required Conductor Felton, train service employe, to handle (receive, copy and deliver) train orders, lineups and clearances (forms of record) at Walcott, Wyoming.

2. Carrier shall compensate the oldest, idle, extra telegrapher or the oldest, idle, assigned telegrapher on his day off in case no idle, extra telegrapher on Seniority District No. 2, for one day's (8 hours) pay at the rate of \$2.098 per hour for each of the above violations. Joint check between Carrier and ORT shall be made to determine if employes' names are correct. Mr. R. R. Van Meter should receive compensation for October 22, 1956 and Mr. A. R. Keever for November 2, 1956.

**EMPLOYES' STATEMENT OF FACTS:** There is in full force and effect a collective bargaining agreement entered into by and between Union Pacific Railroad Company (Eastern District), hereinafter referred to as Carrier or Management and The Order of Railroad Telegraphers, hereinafter referred to as Employes or Telegraphers. The Agreement was effective February 1, 1951, is on file with this Division and, by reference, is made a part of this submission as though set out herein word for word.

The disputes submitted herein were handled on the property in the usual manner through the highest officer designated by Carrier to handle such disputes and failed of adjustment. Under the provisions of the Railway Labor Act, as amended, this Board has jurisdiction of the parties and the subject matter.

The three separate disputes submitted herein originated at Walcott, Wyoming. Walcott is located on Carrier's main line railroad, 21 miles east of Rawlins, Wyoming. At this point it is double track railroad. Eighteen regular scheduled passenger trains are operated through this area daily. It being on the main line many through freight trains and at least one local freight are operated.

Walcott is a very small town and sometime prior to January 31, 1956, the Management petitioned the Board of Equalization and Public Service Commission, State of Wyoming, to close the station facility at this point. On October 26, 1955, order was entered authorizing the Carrier to discontinue station service at this point. Effective January 31, 1956, the position of Agent-Telegrapher at this point was abolished.

are considered by this Board, the claims should be denied because they are completely lacking in merit.

(Exhibits not reproduced.)

**OPINION OF BOARD:** The Board is confronted with a procedural objection timely made by Carrier on the property and reiterated at this level of appeal that these claims are barred from our consideration by Petitioner's failure to comply with the requirements of Section 1 (c) of Article V of the National Agreement of August 21, 1954, which, in pertinent part, reads:

"\* \* \* 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. \* \* \*"

The facts upon which the objection is based are: The station at Walcott, Wyoming, was closed on January 31, 1956. On February 25, the Organization filed a claim which in its substantive aspects was the same as those now before the Board except that it called for payment based upon the call rule rather than a day's pay (8 hours) under the Basic Day Rule (Rule 20). The initial claim was progressed to a final declination on the property on May 10, 1956. No appeal from that decision was taken to this Board. The instant claims were filed on October 10, October 27, and November 24, 1956. They were progressed on the property to Carrier's highest appeals officer who denied them on January 5, January 24, and March 8, 1957. The grounds for denial were that the claims were covered by the denial of the original claim on May 10, 1956.

Petitioner argues that the claims now before the Board should be decided on the merits; that the original claim was not further progressed because it contained technical errors; that failure to appeal the original claim within the 9 months time period can have no effect upon the validity of these claims which are properly here as "continuing claims" for certain Claimants and specified dates.

The Board finds the claims are barred under the rule. The genesis of these claims and the original claim was the closing of the Walcott agency. Both allege violation of the Scope Rule of the same Agreement as a result of the closing of the station and the subsequent assignment of telegraphers duties to others not covered by that agreement. The only change made following final denial of the original claim was to increase the damages sought. Such change does not affect the substantive merits of a claim, and, therefore, may not be held to result in a new or different claim. Here the substance of the claims before the Board is the same as was contained in the original claim. That claim became barred for failure to appeal it within the 9 months time limit of the rule. These claims represent a re-filing or re-submission of the original claim. The Board has ruled that claims once barred under a time limit rule cannot be resubmitted for adjudication. (See Award 10453; also Award 943 of the Fourth Division). We have also found that continuing claims are not open to re-filing under Article V of the National Agreement (*supra*). (Awards 9447 and 10251, cited and relied on in Award 10453).

Under the foregoing holdings and in the light of the facts of record in this particular case, the Board finds the claims are barred under Section 1 (c)

of Article V of the August 21, 1954, Agreement. Accordingly, they will be dismissed.

Claims are barred.

**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;

That the claims are barred under Article V of the National Agreement of August 21, 1954.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of THIRD DIVISION

ATTEST: S. H. Schulty  
Executive Secretary

Dated at Chicago, Illinois, this 14th day of September, 1964.