



Award No. 16010

Docket No. TE-14872

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John J. McGovern, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION
(Formerly The Order of Railroad Telegraphers)

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Southern Railway, that:

1. Carrier violated the Telegraphers' Agreement when on the following Saturdays, August 11, 18, September 1, 8, 15 and 22, 1962, and continuing on subsequent Saturdays thereafter, it removed work being performed by regular assigned Agent-Telegrapher E. D. Atkins, Marengo, Indiana, and placed this work on employes of the High Rock Quarry at Marengo, Indiana, employes not covered by the Telegraphers' Agreement. On each of the dates mentioned herein Claimant Atkins was available and ready to protect a call on one of his regular rest days but was not allowed to do so.

2. Carrier shall compensate E. D. Atkins, regular assigned agent-telegrapher, Marengo, Indiana, for one (1) call (two hours and forty minutes) on each of the following dates, August 11, 18, September 1, 8, 15 and 22, 1962, at time and one-half times the Marengo, Indiana agent-telegrapher pro rata rate of \$2.55 per hour, total for six (6) calls \$61.20, and continuing on subsequent Saturdays thereafter, Carrier shall pay this amount as long as this violation continues, which dates are to be determined by a joint check of the Carrier's records.

3. This is a continuing claim.

EMPLOYEES' STATEMENT OF FACTS: Marengo, Indiana, is located on the St. Louis Division of this railroad. At this location is the negotiated position of Agent-Telegrapher with a negotiated rate of pay of \$2.55 per hour. Claimant E. D. Atkins is the regular assigned Agent-Telegrapher at Marengo, Indiana, having acquired this position by the use of his seniority rights. His assigned work week is Monday through Friday, 8:00 A. M. to 5:00 P. M., with one hour for lunch. His assigned rest days are Saturday and Sunday. He acquired this position through his seniority rights in November of 1961.

The High Rock Quarry is located at Marengo, Indiana. This quarry has shipments to be billed out six days per week, Monday through Saturday, dur-

"RULE 44.

TERMS OF AGREEMENT

This agreement supersedes and cancels all former agreements, but does not, except where rules are changed, alter former accepted and agreed to practices, working conditions or interpretations.

This agreement is revised as of September 1, 1949 and shall continue in effect until thirty (30) days' written notice is given by either party to the other of desire to revise or modify in accordance with the provisions of the Railway Labor Act."

In addition, the Chicago Agreement of August 21, 1954 contains the following, identified as Article V, Sections 1 (a) and (b):

"(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based. Should any such claim or grievance be disallowed, the Carrier shall, within 60 days from the date same is filed, notify whoever filed the claim or grievance (the employe or his representative) in writing of the reasons for such disallowance. If not so notified, the claim or grievance shall be allowed as presented, but this shall not be considered as a precedent or waiver of the contentions of the Carrier as to other similar claims or grievances.

(b) If a disallowed claim or grievance is to be appealed, such appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision. Failing to comply with this provision, the matter shall be considered closed, but this shall not be considered as a precedent or waiver of the contentions of the employes as to other similar claims or grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

(Exhibits not reproduced.)

OPINION OF BOARD: Except for different dates, this claim is identical with one filed by the Employees on May 5, 1962, and which they failed to handle to a conclusion within the time limits provided by Article V, August 21, 1954 Agreement.

With respect to both claims the Employees consistently contended that the subject matter involved a "continuing claim." The Carrier, at the local level, contended that neither action constituted a "continuing claim." However, when the present claim reached the Board, Carrier appears to have adopted the Employees' characterization of the claim as a continuing one.

Therefore, in line with the parties' apparent agreement as to the type of claim involved; and assuming but specifically not deciding that the subject

matter is in fact a "continuing claim" it must be dismissed on authority of the line of awards including 9447, 10251, 10329, 10453, 12851, 14829 and 15327.

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 claim is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December 1967.