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AWARD NO. 9
CASE NO. 9

SPECIAL BOARD OF ADJUSTMENT NO. 266
THE ORDER OF RAILROAD TELEGRAPHERS
vs.

THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY

STATEMENT OF CLAIM:

"Claim of the General Committee of The Order of Railroad Telegraphers on the Delaware, Lackwanna & Western Railroad, that:

1. The Carrier violated and continues to violate the provisions of the agreement between the parties signatory thereto, when it abolished the position of agent at Belfast Jct., Pennsylvania, without in fact abolishing the work of said position; and
2. If the Carrier elects to continue the performance of the work formerly embraced by the agent's position at Belfast Jct. at this location, it shall be performed by, and be assigned to, employees coming under the agreement; and
3. The Carrier shall, by an appropriate order of your Board, commencing June 9, 1953 and each subsequent day or until all of the work formerly performed by the agent at Belfast Jct. is returned to the Telegraphers' class and craft, pay to the senior idle employee, extra in preference, a day's pay of 8 hours at the former rate of the abolished position at Belfast Jct., such payee to be determined by joint check of the Carrier's records; and
4. Any other employee under the agreement who was adversely affected by Carrier's improper abolishment of the agent's position at Belfast Jct., shall be compensated for any loss in wages and/or expenses incurred by reason of Carrier's violative action."

OPINION OF BOARD:

The issue involved in the subject claim, namely the alleged improper abolishment of the Agent's position at Belfast Junction and transfer of the work thereof to other employees, was filed with the Carrier in March 1950 - - this position having been abolished as of January 1 of that year. Said claim was denied by Carrier's highest operating officer on June 9, 1950. In the parties' Mediation Agreement of June 9, 1953 this claim was listed as being withdrawn. However, on August 7,

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1953 the Organization filed a "fresh claim" which again alleged that the subject position was improperly abolished and the work transferred to others, but requested compensation retroactive to June 9, 1953, instead of January 1, 1950 as in the original claim. Notice of intent to submit the new claim to the Adjustment Board is dated December 30, 1955. The Organization contends that only the train order aspect of the original claim was settled as a result of the Mediation Agreement, but that the alleged improper removal of other work from the Agent's position at Belfast Junction has continued to be in dispute.

The original claim referred to all of the work said to have been performed by the incumbent of the Agent position in question. The record indicates that the entire claim was withdrawn as part of the Mediation Agreement of June 9, 1953. Some cases on the mediation docket were listed in the resulting agreement as "Removed" and it is agreed that this disposition did not foreclose the Organization from progressing such claims to the Adjustment Board if it wished. Other claims were settled on the basis of terms expressly set forth in the Mediation Agreement, while still other claims were listed as withdrawn on the basis of certain terms specified in this document.

Since the basic issue confronting us here was withdrawn in its entirety as of June 9, 1953 without any qualification being noted in the Mediation Agreement, we think the Carrier was entitled to conclude that the controversy was closed. No change in circumstance occurred between the withdrawal of the original claim and the filing of a new one protesting the same Carrier action that took place as of January 1, 1950. The fact that the Petitioner adjusted the retroactive date of the requested compensation in refiling the claim does not lend it validity in the

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light of the history of this case A dismissal award is warranted.

A W A R D:

Claim dismissed.

s/ LLOYD H. BAILER
Lloyd H. Bailer, Neutral Member

s/ W. I. CHRISTOPHER
W. I. Christopher, Employee Member

s/ F. DIEGTEL
F. Diegtel, Carrier Member

New York, New York

July 8, 1959