

AWARD NO. 285
Case No. TCU-6-W

SPECIAL BOARD OF ADJUSTMENT NO. 605

PARTIES) THE KANSAS CITY SOUTHERN RAILWAY COMPANY
TO THE) and
DISPUTE) TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

QUESTION

AT ISSUE: Jurisdiction of Disputes Committee.

Inasmuch as Article VI, Section 3 abrogated Section 13 of the Washington Job Protection Agreement and substituted the disputes provisions and procedures of this Agreement, disputes declared by the Third Division, National Railroad Adjustment Board to be referable to the Section 13 Committee (Washington Job Protection Agreement) must instead be submitted to the Disputes Committee provided by Article VII.

OPINION

OF BOARD: In 1959 the Organization filed a submission with the Third Division which alleged that a coordination agreement executed in 1958 was violated, when Carrier abolished a CTC Operator's position (KCS) and transferred the work to a Telegrapher (L&A) in another seniority district.

The Third Division ruled in Award 12717 that, pursuant to Section 13 of the Washington Agreement, such a dispute "may be referred" to the Committee set up by that Agreement. But, the Award said, the permissive language is not "compulsion."

In Award 12717 the findings stated that "this Division of the Adjustment Board has jurisdiction over the dispute involved herein" and that it is a "moot question" whether the Agreement was violated. No explanation was given why it was "moot." The Carrier members of the Board had argued that the Third Division had no jurisdiction. Nevertheless, the Award, concurred in by the Carrier members (who filed a separate

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opinion setting forth their views on the absence of jurisdiction), held "Claim declined." The Award neither dismissed for want of jurisdiction nor referred the matter to the Section 13 Committee without prejudice.

Hence it must be held that despite the uncertainties over the language in that Award and its unusual formulation--"Claim declined"--it had ruled on the merits. A ruling on the merits is final and dispositive.

Moreover, this claim, which arose in 1958, was not filed with the Disputes Committee until 1966. It had not been filed in both forums originally, as could have been done in 1959. A claim arising in 1958, not brought to a tribunal for eight years, is too stale to warrant handling. Laches would dictate its dismissal.

Awards of the Third Division (4941, 5949, 6650, 7135, 10020) have held that delays of two to five years in bringing an issue before it were unreasonable.

A W A R D

Claim dismissed.


Milton Friedman
Neutral Member

Dated: Washington, D. C.
March 7, 1972