

Award No. 6935

Docket No. CL-6903

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That Carrier's unilateral action effective September 1, 1949, in denying employes of offices and subdepartments of the Carrier's Accounting Department under jurisdiction of Mr. V. L. Gish, Auditor-Treasurer, Tyler, Texas, rest periods of 15 minutes in the morning and 15 minutes in the afternoon of their work day was violative of the rules of Agreement effective April 1, 1946, between the Carrier and the Brotherhood that governs the hours of service and working conditions of the employes.

(2) That all employes in these respective offices and/or subdepartments of the Carrier's Accounting Department at Tyler be paid for the time involved, namely 30 minutes each work day during period September 1, 1949 until the practice of affording them their rest period time was restored effective August 8, 1951, at the rate of time and one-half.

EMPLOYES' STATEMENT OF FACTS: (1) For many years it has been the practice, in all of the departments mentioned in part (1) of our Statement of Claim, to permit the employes to leave their desks for fifteen minutes in the morning and for fifteen minutes in the afternoon, as recess or rest periods, and they were permitted to absent themselves from work to secure refreshments, such as soft drinks, coffee, or other refreshments. They were permitted to leave the building and secure these refreshments at the most available location. This total of thirty minutes each day was commonly referred to as "rest periods" and there was no deduction from the employes' pay for these rest periods.

The foregoing is substantiated by various exhibits attached hereto and made a part of this submission.

In the August, 1949 issue of the Cotton Belt News, published by the Public Relations Department of the St. Louis Southwestern Railway Lines in St. Louis, Missouri, there appears an article by Mrs. Eula Kindley, Secretary to the Auditor of Freight Accounts, Tyler, Texas, wherein she states: "We are

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute is the outgrowth of an earlier award and opinion by this Board (Docket CL-5338, Award 5394) which, according to Board Interpretation No. 1 in the cited docket, has been fully complied with by the Carrier and the claims thereby sustained have been paid. When the Board entered its award and later interpreted same, all processes of the Board for settlement of that dispute and allowance of claims at issue were exhausted. Claims having been paid in accordance with the Board's Award and Interpretation, there was no occasion for appeal to the courts. Hence that dispute was finally and conclusively settled, and all questions decided in that docket were completely adjudicated by a final and binding award of this Board.

The Employes return for succor, and cause to be docketed a new dispute in order that they may have considered, at this late date, supporting proof for claim progressed only once on the property and that in connection with the award that has since become final and binding.

Some of the equity is on the side of the Employes in this later dispute, but this Board is powerless to do or grant equity. The Carrier is quick to remind us that we are a statutory board with only such limited power and authority as has been conferred upon us by an act of Congress and that the Board is not, in all things, supreme in ordering payment of money to which an employe is entitled by reason of our awards.

Ordinarily, this Board does not concern itself with legal expressions like "res judicata", "split causes of action", etc., which have to do with pleading and practice in courts of record, nor are we inclined to split hairs to give expression to some hyper-technical legal defense where matters in dispute are possessed of real merit and substance.

On the other hand all our acts and conduct are governed by law and any and all opinions and awards entered by us must be within the framework of, and find support in, the Railway Labor Act, as Amended. Accordingly, an erroneous attempt on our part to assume jurisdiction of a dispute involving payment of claims could lead only to reversal by the courts, or provoke greater and more serious dispute on the property.

Careful attention has been given the docket in this case and we have again examined Docket CL-5338. All that is before us at this time concerns the validity of claims which were progressed on the property in connection with the earlier docket, were there put in jeopardy by insufficient proof, accordingly denied, and for the second time held to be invalid by Board interpretation.

If, as we maintain, our awards are final and binding, there must be an end some time to one and the same dispute or we settle nothing, and invite endless controversy instead. The pending claims, having been once adjudicated, are now barred from further Board consideration, and must be denied on jurisdictional grounds.

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 Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein.

AWARD

Claim (1) dismissed in accordance with the Opinion. Claim (2) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. I. Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955