

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Upon failure of the Division to agree upon its jurisdiction to hear and decide cases individually submitted, Walter Everly, et al., invoked the services of the National Mediation Board for the appointment of a referee to break the deadlock, as provided in Section 3, First (L) of the Railway Labor Act. Upon certification the National Mediation Board appointed Thomas F. McAllister for that purpose.

Following is the case in question, the opinion and award of the Second Division with Referee McAllister sitting as a member thereof.

PARTIES TO DISPUTE:

WALTER EVERLY, C. S. LAWHORN, O. E. COLLINS, S. R. BEATTY, DWIGHT PHILLIANS, JOHN F. KOENIG, B. F. BILGER, CHARLEY GRIFFITH, EARL GRIFFITH, EDWARD RICHARDSON, G. A. BLAIR, H. F. ALTENBERGER, C. JONES, A. J. McFANN, VERN EMERSON, CLAY POWELSON, V. L. CARR, L. E. WYGLE, F. DETRICK, HENRY C. POLLOCK, HARRY GREEN AND S. W. SULLIVAN

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Petitioners desire awards on the following particular questions:

1. Revision and adjustment of their seniority employment rights.
2. Compensation for the wages they have lost by failure of defendant corporation to fairly recognize their seniority employment rights.

EMPLOYES' STATEMENT OF FACTS: The controlling facts of the dispute between petitioners and defendant are as follows:

1. Petitioners entered the service of the Erie Railroad Company as employees of the car department of said company at Marion, Ohio, between the dates of October 24, 1913 and May 29, 1922.
2. All employees of the Erie Railroad Company, in addition to their earned wages, are guaranteed what is known generally as seniority employment rights. Seniority employment rights are and have always been based upon the date that an employee actually enters the service of the Erie Railroad Company.
3. Employees' service seniority, as officially recognized by defendant, is reflected by the contents of a "Seniority Roster" posted by defendant on its premises. A copy of the prevailing seniority roster of the car department of the Erie Railroad Company at Marion, Ohio, is herewith submitted, marked Exhibit S.

20. On July 30, 1938, John A. Marvin, Secretary Treasurer of Erie System Federation No. 100, directed a letter to Clay Powelson, one of the petitioners herein, stating in effect that the question of seniority rights as it affects petitioners has always been an open question and did not enter into the strike settlement except as to form a method of returning the strikers to work. A true copy of this letter is submitted, marked Exhibit U.

21. The true seniority employment rights of the petitioners herein are recognized by defendant in one particular to-wit: Petitioners in several instances hold passes for transportation issued by defendant which are known as "twenty-year passes." The men at the head of the seniority roster, not having been in the service of defendant for a period of twenty years or more do not have the privilege of passes of this type, yet they do enjoy all other seniority employment rights over petitioners herein because of the status of the prevailing seniority roster.

POSITION OF CARRIER: The group of employes involved in this ex parte submission to your Board are car department employes at Marion, Ohio and subject to the rules for mechanical department employes, composed of machinists, boilermakers, blacksmiths, sheet metal workers, electricians, carmen, also their apprentices or helpers, effective May 1, 1929.

This particular complaint arises as a result of shopmen's strike July 1, 1922.

Some of the employes at Marion, Ohio did not leave the service, remained loyal, and continued to work. It was further necessary for the management to employ other mechanics and helpers.

A settlement of the strike was reached through negotiations with the Federated Shop Craft groups at Youngstown, Ohio September 27, 1922, which settlement is recognized as the "Youngstown Agreement."

Mr. Louis Mastriani, general chairman, Brotherhood Railway Carmen of America, acted for and signed the Youngstown Agreement for these carmen.

In this settlement, the employes who remained loyal and continued to work, and employes who were hired by the management in order to carry on the operation, were placed at the top of the working list (rosters). The settlement then provided that the men who had left the service would be returned to work in positions of the class they originally held on June 30, 1922, and at the same points, and in the same relative standing as between themselves (except those guilty of proven violence * * *). As many of the men who were out at the time of the settlement as possible were to be immediately returned to work at the rates agreed upon and others were to be returned as fast as possible under the circumstances and as conditions would permit.

The employes progressing this ex parte submission to your Board, except for changes made as the result of retirements, resignations, deaths or separations from service, are in exactly the same status as they were after the effective date of the Youngstown Agreement.

Under the Railway Labor Act as amended for the purposes of representation, car department employes are represented by the general chairman, Brotherhood Railway Carmen of America and this alleged grievance has not been progressed to us through that organization.

OPINION OF THE DIVISION: Petitioners are mechanical department employes of the Erie Railroad Company, who went out on strike July 1, 1922. In settlement of the strike, an agreement was entered into between the Erie Railroad Company and the mechanical department employes of the company, in which it was agreed that petitioners would be taken back in service, to follow those in rank who had remained in service or were hired during the period of the strike, in the same relative position as between themselves, as was indicated by their seniority date and standing prior to the strike. Peti-

tioners thereupon returned to service with the carrier, and on August 6, 1937, they presented a petition for revision of the seniority roster of the company to the chairman of the Brotherhood Railway Carmen of America. Thereafter on several occasions during the ensuing year, their attorney also sought to obtain a revision of the seniority roster of petitioners' division of the carrier company, but failing to secure any action, they filed their present petition with the Second Division of the National Railroad Adjustment Board, asking for revision and adjustments of their seniority rights and compensation for the wages lost by reason of the alleged failure of the carrier to fairly recognize such rights.

There is an agreement in force between the Erie Railroad Company and the mechanical department employees of such carrier, which provides as follows with regard to grievances:

"(a) Should a dispute arise as to the relative standing of an employe, or any other controversy arise, growing out of this agreement or from other cause, that cannot be adjusted by the Erie Railroad Company and said employe, the matter in dispute shall be referred to one or both committees established and constituted as herein and hereinafter provided, for a decision by a majority vote thereof.

"(b) Local shop conference committees representing all Shop Crafts will be elected from the employes from each shop point, as may be agreed on, who shall represent the employes on all matters involving any misunderstanding concerning discipline, wages, and working conditions. All such differences shall be adjusted, if possible, by the local conference committee at the meeting at which they are presented. If differences are not so adjusted they shall be referred to a District Adjustment Committee made up of the local Chairman and General Chairman of their respective crafts or their authorized representatives (2), representing the men; Shop Superintendent, District Master Mechanic or Assistant Superintendent of Motive Power; or their representatives (2) representing the Company. A majority vote of the District Committee to finally decide the controversy."

Petitioners have never complied with the foregoing rules. The dispute in question has not been referred to the local shop conference committee or the district adjustment committee. The Railway Labor Act provides that disputes between a group of employes and a carrier, growing out of grievances, or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner, up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties, or by either party, to the appropriate division of the Adjustment Board. (45 U. S. C. A. Sec. 153 [1].) In the instant case the usual manner of handling such disputes as that in question, is according to the provisions of the contract. These requirements have not been complied with. Failure to follow the procedure required in the statute, and defined in the agreement, leaves this Board without jurisdiction to entertain the petition. See *Gooch v. Ogden Union Railway and Depot Company*.

AWARD

The Board having no jurisdiction in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 18th day of November, 1940.