

Award No. 1025

Docket No. 954

2-DL&W-CM-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That the carrier be ordered to furnish the Carmen's Local Committee a copy of the transcript of the investigation held beginning at 2:00 P. M., September 20, 1943.

EMPLOYES' STATEMENT OF FACTS: At Elmira, New York, the car foreman and the carmen's local committee assembled at 2:00 P. M., September 20, 1943, to investigate grievances arising in the train yard.

A stenographic report of this investigation was made at the request of the local committee. Upon the conclusion of the investigation, the local committee requested a copy of the stenographic report, and the carrier has refused to furnish the local committee a copy of same.

The agreement controlling is dated effective November 1, 1935.

POSITION OF EMPLOYES: The employees contend that the carrier violated Rule 30 of the current agreement by refusing the committee a copy of the stenographic report taken of this investigation on September 20, 1943.

Rule 30 reads as follows:

"Should any employee subject to this Agreement believe he has been unjustly dealt with, or any of the provisions of this Agreement have been violated, the case shall be taken to the Foreman, General Foreman, Master Mechanic or Shop Superintendent, each in their respective order, by the duly authorized Local Committee or their representative within ten (10) days. Nothing herein contained shall infringe upon the right of employees to present grievances as provided in the Railway Labor Act, as Amended June 21st, 1934.

If stenographic report of investigation is taken the committee shall be furnished a copy. If the result still be unsatisfactory the duly authorized general committee, or their representatives, shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within ten (10) days of application.

All conferences between Local officials and local committees to be held during regular working hours without loss of time to committeemen."

This Board will not assume a colorable jurisdiction under the guise of "interpreting" rules by reading into them something which is not there, particularly when it has already decided that the routine at Elmira does not violate the agreement. This is both "sound jurisprudence and common sense."

"It is not advisable, even to reach a result that might appear equitable, to attempt to read into a rule something which is not there. The weight of authority, as well as sound reason, supports this principle."

Award 2132 (3rd Div.)
(Referee Thaxter)

"It is not within the jurisdiction of this Board to either make, or amend, or nullify agreements duly executed by a carrier and its associated employees. This limitation of the Board is bottomed upon the right of freedom of contract, sound principles of jurisprudence, and common sense."

Award 217 (4th Div.)
(Referee Bliss)

The Board will note that the relitigation of the issues set at rest in Award 918 is not involved in this proceeding. The decision of this Board in that case that the routine at Elmira does not violate the agreement is binding here. In fact, this claim is a transparent effort to relitigate Award 918 and such attempt should not be countenanced by this Board, since the organization has already had its day in court.

Section 3 (m) of the Railroad Labor Act reads:

"The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy and the awards shall be final and binding upon both parties except insofar as they contain a money award."

* * * * *

In First Division Award 6334, the Board said:

"The question is whether the same controversy may be brought to this division piecemeal, a practice which would not seem to be contemplated by the provisions of the Railway Labor Act, and which is neither fair to the parties nor proper practice if the Division is to function efficiently."

* * * * *

This division hereby definitely adopts the rule that controversies are not divisible and may not be brought to it as protest and as claim for compensation."

WHEREFORE, the request of the employees should be denied.

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(All emphasis has been supplied.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The failure or refusal to furnish the committee with a copy of the transcript of investigation described in the claim is a violation of Rule 30.

However, since it was disclosed at the hearing of this case before the Division that the record was subsequently destroyed, it is now impossible to furnish the committee a copy of the transcript as demanded in the claim of the employes.

AWARD

Protest of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of August, 1944.