

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**LOCAL UNION No. 570, INTERNATIONAL BROTHERHOOD OF
FIREMEN AND OILERS, HELPERS, ROUND HOUSE
AND RAILWAY SHOP LABORERS**

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That employees Austin A. Timms and Samuel McWilliams had been wrongfully taken out of service and should be restored with back pay.

The issue before the Division is one of jurisdiction to docket and hear the case. The Division deadlocked on this issue and a referee was appointed by the National Mediation Board to determine the sole question whether the case should be docketed. A hearing was afforded the parties on January 7, 1947, at which both parties were represented. The System Federation No. 103, represented by the Railway Employees' Department, A. F. of L., was an intervenor in the case. The complainants argued that the Division had no jurisdiction to docket and hear the case. The carrier argued that the case was within the jurisdiction of the Division to be docketed. The System Federation filed a brief in which it was held that the Division did not have jurisdiction because the case had not been fully processed on the property.

The facts of the case as they relate to the question of docketing were as follows:

The complainants, Timms and McWilliams, officers of Local 570, International Brotherhood of Firemen and Oilers, were taken out of service in 1944. They alleged that they had been wrongfully removed and sought redress from the local officials of the carrier. No redress was given and they appealed to the courts in a suit for damages. The Superior Court of Cook County, Illinois, held that the complainants had not exhausted their remedies under the Railway Labor Act. It appears that some language of the court was construed by the complainants to indicate that they were directed by the court to bring their case directly to the National Railroad Adjustment Board. Their petition to the Board said:

"We are directed by Honorable Judge Donald McKinley of Superior Court of Cook County, Illinois, to file before your Honorable Board an Ex Parte Submission for employees Samuel McWilliams and Austin A. Timms on behalf of Local Union No. 570, International Brotherhood of Firemen and Oilers."

Although the complainants had invoked the jurisdiction of the Division, they argued in their petition and in the hearing that the Division did not

have jurisdiction apparently for the purpose of removing the barrier that the court had raised, namely that the complainants had not exhausted their remedies under the Railway Labor Act.

FINDINGS: The Division is called upon to determine whether it has jurisdiction to docket and hear the case. Primarily it must determine whether there has been compliance with the procedure laid down in the Railway Labor Act for the processing of complaints and grievances.

The Railway Labor Act is explicit on procedure. The Act requires that disputes "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." After exhausting the procedures on the property, either party or both may appeal to the National Railroad Adjustment Board.

The procedures on the property are outlined in the agreement between the carrier and the union. Revised Rule 18 of the agreement reads:

"Should any employee subject to this agreement believe he has been unjustly dealt with, or any provision of this agreement violated, the case shall be taken to the foreman, general foreman, master mechanic, or shop superintendent (or corresponding officials where these titles are not in effect), each in respective order, by the duly authorized local committee, or its accredited representative, within ten (10) calendar days. If stenographic report of the investigation is taken, the duly authorized committee shall be furnished a copy of the transcript.

Should the case remain unsettled after conference with the highest local official, at the point at which the grievance originated, a joint statement shall be prepared and signed by such local official and the duly authorized local committee, or its accredited representative, covering the facts, the employees' position and the position of such official, and submitted to the next higher official. If a decision adverse to the employee is rendered by the higher official and such decision is unsatisfactory, the duly authorized general committee, or its accredited representative, may then take the case to the next higher officials, in respective order, up to and including the highest authority designated to handle such matters.

Should the highest designated railroad official, or his duly authorized representative, and the duly authorized representative of the employee, as provided in this rule, fail to agree on a settlement, the case may then be further progressed in accordance with the Railway Labor Act.

All conferences between local officials and local committees as provided for in this rule shall be held during regular working hours and without loss of working time to committeemen.

Prior to assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shut-down by the employer nor a suspension of work by the employees.

No employee shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employee and the duly authorized committee shall be apprised of the precise charge or charges and given reasonable opportunity to assure the presence of necessary witnesses. If it is found that the employee has been unjustly suspended or dismissed from the service, such employee shall be reinstated with his seniority rights unimpaired, and compensated for his net wage loss, if any, resulting from said suspension or dismissal.

NOTE: This rule does not attempt to obligate the carrier to refuse permission to an individual employee to present his own grievance.

ance or, in the hearing involving charges against him, to present his own case personally. The effect of this rule, when an individual employe presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a part to all conferences, hearings or negotiations between the aggrieved or accused employe and the representative of the carrier."

It does not affirmatively appear in the evidence that the case of Timms and McWilliams was processed "in the usual manner" to the higher and highest authorities designated by the carrier to handle disputes. On the contrary, the testimony shows that the case was not so processed. In consequence the Division under the law and its own rules is without jurisdiction to docket the case. The National Railroad Adjustment Board rule reads:

"No petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the Railway Labor Act, approved June 21, 1934."

It requires no detailed argument to show that such a rule is necessary and salutary. The purpose of the Railway Labor Act was to promote settlements by the parties on the property. This purpose would be destroyed if the National Railroad Adjustment Board should permit cases to come to it without compliance with the Act for local settlements. The work of the National Railroad Adjustment Board would be thrown into chaos if short cuts to it were permitted.

AWARD

The Division concludes that it does not have jurisdiction to docket the case of Timms and McWilliams.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of January, 1947.