

Award No. 1471

Docket No. 1367

2-RyEx-BK-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

INTERNATIONAL BROTHERHOOD OF BLACKSMITHS, DROP
FORGERS AND HELPERS, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.

RAILWAY EXPRESS AGENCY, INCORPORATED

DISPUTE: CLAIM OF EMPLOYES: 1—That the agreements, former or current, between the Railway Express Agency, Inc., and the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, do not authorize depriving ten (10) employees in the New York area of their right to six (6) registered vacation working days' pay which were to begin June 27, July 11, 16 and 30, and August 1, 15 and 27, 1949, because of the election made to furlough nine (9) of them on June 22 and the tenth one on July 19, 1949.

2—That accordingly the Railway Express Agency, Inc., be ordered to make these employees whole by compensating each of them at their applicable hourly rates of pay for the aforesaid days which were solely conditioned on their years of service prior to January 1, 1949.

EMPLOYES' STATEMENT OF FACTS: The Railway Express Agency, Inc., hereinafter called the carrier, regularly employed in the New York area the employees referred to in the above statement of claim and their names, service dates, the dates on which they were registered to begin their vacations, including the dates they were furloughed follows:

	I Name	II Date Entered Service	III Date Registered For Vacation	IV Date Furloughed
1.	A. Urban	Dec. 30, 1942	Aug. 1, 1949	June 22, 1949
2.	E. Zumpano	Jan. 19, 1944	Aug. 15, 1949	June 22, 1949
3.	J. McEvoy	May 9, 1944	June 27, 1949	June 22, 1949
4.	A. Taub	Apr. 30, 1945	June 27, 1949	June 22, 1949
5.	J. Walsh	June 1, 1945	July 16, 1949	June 22, 1949
6.	G. Noonan	Oct. 24, 1945	Aug. 27, 1949	June 22, 1949
7.	D. Ostrander	Apr. 1, 1946	Aug. 27, 1949	June 22, 1949
8.	A. Neiderreiter	Apr. 7, 1947	July 30, 1949	July 19, 1949
9.	R. Herdt	Aug. 27, 1947	June 27, 1949	June 22, 1949
10.	A. Bessel or Vessel....	Dec. 15, 1947	July 11, 1949	June 22, 1949

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 ten claimants in this case hold seniority under the agreement between the carrier and the Blacksmiths, Drop Forgers and Helpers. Nine of the claimants were furloughed on June 22, 1949, and the other one on July 19, 1949. Claimants were scheduled for 6-day vacations under Rule 17, Agreement of January 1, 1950. It is the contention of the claimants that they should be paid for six days' work in lieu of vacation pay under the facts here shown.

The record in this case shows that the claims here made were first handled by Vice President Carl M. Simonson of the organization with Vice President Albert M. Hartung of the carrier. There is some evidence that a verbal inquiry was made to G. D. Ford, Superintendent of carrier's shops and garages, the proper person to whom these claims should have been initiated. There is no evidence that formal claims were ever addressed to him or that he ever made a decision with reference thereto. The carrier contends that this constitutes improper handling and deprives this Board of power to hear the claims on appeal. The controlling agreement provisions are contained in Rules 35, 36, 37 and 38, current agreement, the pertinent parts of which are:

"Rule 35. Hearing. An employe dissatisfied with the decision shall have a fair and impartial hearing before the next proper officer provided written request is made to such officer and a copy furnished to the officer whose decision is appealed, within thirty days of the date of the advice of the decision. Hearing shall be granted within twenty days thereafter and a written decision rendered within twenty days of the completion of the hearing.

Rule 36. Appeal. If an appeal is taken from this hearing it must be filed with the next higher official and a copy furnished the official whose decision is appealed within thirty days after the date of the decision. The hearing of this appeal shall be held within twenty days thereafter and a written decision rendered within twenty days after the completion of the hearing.

Rule 37. Further Appeal. If a further appeal is taken it must be filed as per Rule 36 of this Article within twenty days of the date of the decision appealed from. On such appeals a hearing may be given and written decision must be rendered as promptly as possible.

Rule 38. (a) Grievances. Should an employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, he shall have the same right of hearing and appeal as provided above. If written request is made by him to his immediate superior within twenty days of the cause of complaint, a conference will be granted within ten days after application. . . ."

The record clearly shows a failure to progress the money claims of these claimants in accordance with the foregoing rules. The inquiry made of Superintendent Ford appears to have been in regard to the proper interpretation of Rule 17, the rule governing the granting of vacations. Nothing

appears to have been submitted to him regarding claimants' money claims. It appears that the claims of these claimants were first made to Vice President Hartung of the carrier, who questioned the correctness of their handling. There was no waiver of the improper handling by the carrier.

The claims were not handled on the property in accordance with the agreement. The rules for the handling of grievances are not mere technicalities which either of the parties may disregard. They must be substantially complied with to give this Board jurisdiction of the dispute. See Award 5077, Third Division. We are obliged to say that the claims made in the present case are not before this Board for determination.

It may be argued that the merits of the case can be determined for the guidance of the parties in applying the controlling rules in future cases under the provisions of Rule 38 (b) providing:

"(b) Questions other than Individual Grievances: The right of duly accredited representative to take up with the management questions involving the application of the rules of this agreement without written request being made by an employee is hereby recognized."

The purpose of this rule is to permit the organization through its accredited representatives to take up questions with management involving the application of the rules. The dispute before us consists of the claims of ten employees for money claims. The organization represents them only in an agency capacity. It is not a case where a representative of the organization sought an interpretation of a rule. The claims are for money. The organization may not start a claim on one basis and, when it fails, change the nature of the claim on the appeal. If such a variance in the issues were to be permitted, the parties could never be certain of the precise matters to be determined on the appeal. The issues must be the same as those determined on the property. They may not be one thing on the property and something else before this Board.

We are required to say that there are no issues properly before this Board for determination.

AWARD

For the reasons stated in the findings the appeal to this Board is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman,
Executive Secretary.

Dated at Chicago, Illinois, this 27th day of July, 1951.