

Award No. 1639
Case No. MC-1401
2-PRR-I-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Upon failure of the Division to agree upon its jurisdiction to docket this case, petitioners 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 Harold M. Gilden for that purpose.

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

PARTIES TO DISPUTE:

**VIOLET ROUSH FUHRMAN, DOROTHY CARPENTER
KENNEDY, MARY F. QUIGLEY, ET AL.**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: Has the railroad the right to furlough or discharge women employes hired and employed under the Agreement of October 30, 1942 between the Pennsylvania Railroad and the Brotherhood of Railroad Shop Crafts of America, Pennsylvania System, at a time when the agreement of 1942 was still in full force and effect, said furloughing or discharging being carried out without any regard to the women employes' seniority rights under said agreement?

OPINION OF THE DIVISION: The determination of whether or not the instant case should be docketed (a subject on which this Division deadlocked on June 19, 1952) is the only matter on which we must pass judgment at this time. What we say here applies solely to the docketing question and, therefore, the following observations shall not be construed as a determination of jurisdiction, or as a treatment of the merits.

Insofar as the case before us is not a re-submission of an identical claim, embracing the same parties, as had been previously adjudicated by the Division, there is no difficulty in distinguishing Award 1586. Where, as here, in a new case, a question is raised, challenging the authority of the Division to process the dispute, on the grounds of an alleged failure to comply with the conditions specified in Section 3, First (i) of the Railway Labor Act for conferring jurisdiction on the National Railroad Adjustment Board, (the basis of the Labor Members' objection to the instant docketing,) the issue is one to be taken up and acted upon, more properly, subsequent to, and not before, the docketing of the case. This is especially true either where the parties are not in agreement on the asserted overlooking of compliance with the statutory requirements, or the fact of the omission of the jurisdictional prerequisites is not clearly conceded on the record.

We do not perceive any conflict between the docketing procedure preferred herein and the provisions of Circular No. 1. After all, the mere docketing of a case carries no guaranty that the Division has the necessary jurisdiction to adjudicate the merits of the dispute. Certainly, following the initial docketing of a case, there is no irregularity in entertaining a plea of lack of jurisdiction, and, if sustained, in ultimately entering an order of dismissal.

AWARD

The Division shall docket this case forthwith.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of February, 1953.