

Award No. 1661

Case No. MC-1443

2-PRR-I-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Upon failure of the Division to agree to docket this case, the Division selected the Honorable Edward F. Carter, as referee, to break the deadlock, as provided in Section 3, First (1) of the Railway Labor Act.

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

PARTIES TO DISPUTE:

H. H. MUSSER, Machinist Helper

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That within the meaning of the controlling agreement, and specifically in regards to Regulation 4-C-2 pertaining to the distribution of overtime, the claimant Machinist Helper H. H. Musser has been unjustly dealt with by the carrier on December 18 and 19, 1951, at Harrisburg Diesel Shop, and we therefore claim he should be compensated eight hours for each of the aforementioned days at the punitive rate.

OPINION OF THE DIVISION: Claimant H. H. Musser was regularly assigned as machinist helper, with rest days Tuesday and Wednesday, at carrier's Diesel shop at Harrisburg, Pennsylvania. On December 18 and 19, 1951, carrier used an employe classified as a laborer to perform machinist helper's work. Claimant contends that under the existing agreement he should have been called for this work. His claim is based upon this alleged agreement violation.

On January 22, 1953, a motion to docket the case resulted in a deadlock among the members of the Second Division. The only matter presently before us is whether or not the instant case should be docketed.

It is contended that the dispute was not handled on the property in the usual manner and as required by controlling agreement rules. It is then urged that unless the handling on the property is in compliance with the controlling agreement that the National Railroad Adjustment Board does not have jurisdiction to hear the case and warrants an order denying the right to docket. We do not think this is the proper procedure for reasons which follow, although there is some precedent for it. See Decision No. 1, U. S.

Railroad Labor Board. But the case presently before us requires a consideration of facts, some of which are not even contained in the submissions of the parties. It is fundamental, we think that one should have opportunity to meet any and all evidence that comes before the National Railroad Adjustment Board in any way dealing with his claim. This is particularly true where a failure to comply with procedural rules is not conceded. Award 1639.

We point out that Rule 7-A-2, current agreement, provides in part:

"Where it is considered that an injustice has been done with respect to any matter other than discipline, the employe affected or the duly accredited representative as that term is defined in Part 1 of this Schedule of Regulations, on his behalf, may within ten (10) days present the case, in writing, to the employe's foreman. If the decision of his foreman, which shall be in writing, is unsatisfactory, such decision may then be appealed by the employe affected or by the said duly accredited representative, on his behalf, to the master mechanic or corresponding officer. If the case is not satisfactorily adjusted, it may then be handled by the duly accredited representative with the superintendent."

Rule 8-L-1, current agreement defines a duly accredited representative as follows:

"The term 'duly accredited representative' as used in Part 1 of this Schedule of Regulations, unless otherwise specifically designated, shall be understood to mean the regularly constituted committee or any member or members thereof, or an officer of the Organization signatory hereto."

The record shows that the claim was handled on the property by the United Railroad Workers of America, C. I. O., as representative of claimant. There is evidence in the records of the National Railroad Adjustment Board that the duly accredited representative of claimant is the Railway Employees' Department, A. F. of L. In other words, it is here contended that claimant is bound by the existing and controlling agreement to prosecute his own claim or handle it through the Railway Employees' Department on the property, and that a failure to so handle it defeats any right to come to the National Railroad Adjustment Board.

Clearly the case is within the jurisdiction of the Second Division as defined by the Railway Labor Act. The submissions appear to have been made as required by Circular No. 1, issued by the National Railroad Adjustment Board under date of October 10, 1934. On the face of the submissions as made, nothing appears which is inconsistent with the jurisdiction of the Second Division over the parties and the subject matter of the dispute. The fundamental question in issue here is whether or not the agreement was complied with in the handling of the claim on the property. Such an issue should be determined upon the facts after hearing where it is asserted that agreement provisions are violated. The docketing of the case does not foreclose the question of jurisdiction nor any question of compliance with conditions precedent to a valid appeal to the National Railroad Adjustment Board. Award 1639. Opportunity to be heard ought not to be denied to any party having a justiciable interest in a dispute. It is not consonant with fundamental concepts of adjusting disputes in this country and it should not be done except where necessity requires.

We feel that the case should be docketed, the necessary parties notified and a hearing held. If it then appears, after the facts are fully developed, that conditions precedent contained in the controlling agreement have not been met, then the National Railroad Adjustment Board could properly make such an award or order as the situation demands.

1661—3

776

AWARD

Leave to docket granted.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of March, 1953.