Award No. 2370
Docket No. 2176
2-PULL-EW-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 122, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electricians)

THE PULLMAN COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That The Pullman Company violated the controlling agreement when Foreman Meeks failed to give a written decision within 30 calendar days from the date he received a written claim charging violation of Rule 42 and The Pullman Company refused to sustain the position of the Employes.

2. That accordingly the position of the Employes as submitted in their written claim to Foreman Meeks dated February 26, 1955, be sustained.

EMPLOYES' STATEMENT OF FACTS: Under date of February 26, 1955, a written claim charging violation of Rule 42 was submitted to Foreman Meeks, a copy of this claim is hereby submitted and identified as Exhibit A.

Foreman Meeks did not give a written decision to this claim.

This dispute has been handled in accordance with the provisions of the controlling agreement, effective July 1, 1948, with the highest designated officer to whom such matters are subject to appeal, with the result that this office declined to adjust this dispute.

POSITION OF EMPLOYES: The committee at St. Petersburg yards submitted a claim to Foreman Meeks in accord with Rule 51 which reads in part as follows:

> "When an Employe considers . . . that any of the rules of the Agreement have been violated he or the representative of the Organization party to this agreement shall submit a written statement of facts including the alleged . . . rule or rules which he claims have been violated to the foreman if a yard employe; . . . within 60 days from the date of the . . . alleged rule violation . . ."

organization has progressed the case to the Board solely on the basis of an alleged technical violation of the agreement. However, in the event the organization argues the merits of the case in its ex parte submission the company wishes to reserve the right to argue this question in subsequent submissions before the Board.

CONCLUSION

In this ex parte submission the company has shown that management could not comply with the literal provisions of Rule 51 which requires that written decision be made by the yard foreman in cases involving yard employes inasmuch as there is no yard foreman in the Tampa, St. Petersburg or Sarasota yards. Additionally, the company has shown that no employe was injured because of the fact that decision was rendered by Superintendent Bradfield who has jurisdiction over yard employes in Tampa, St. Petersburg and Sarasota, all of which points were involved in the claim. Finally, the company has shown that awards of the National Railroad Adjustment Board hold consistently that management is not subject to penalty payment for a technical violation of a rule or rules of the agreement when the employes involved are not injured thereby.

The claim in behalf of Electricians C. C. Vaillencourt, T. P. Boyle, et al., as progressed to the Board, is without merit and should be denied.

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 claim here made is that because Foreman Meeks failed to give a written decision within thirty (30) calendar days from the date he received a written claim charging violation of Rule 42, "Filling New or Vacant Jobs," the claim of the employes must be sustained.

The original claim, as presented to Foreman Meeks, is dated February 26, 1955 and reads as follows:

> "In accordance with Rule 51, the following named men of Local 1872 of the I.B.E.W. system Council No. 24 are submitting a claim against the Pullman Company.
>
> 1. That the Pullman Company did violate Rule 42 of the agreement between the Pullman Company and the I.B.E.W. Local 1872 at St. Petersburg, Florida.
>
> Whereas the jobs or vacancies of more than 10 days duration were not and have not been bulletined for a period of 5 days.
>
> 2. Two jobs in St. Petersburg yards on the 4 to 12 shift have not been bulletined or awarded. Jobs held by J. D. Bonadio Pos. 6, and L. Lovel Pos. 2.
>
> 3. Jobs in Sarasota have been filled without being posted or bulletined for bid in St. Petersburg yards, although we are in the same Tampa district. Tampa yards have been filling jobs that have not been bulletined.
>
> 4. It is requested that time and one-half pay be paid to C. C. Vaillencourt, T. P. Boyle, P. J. Ibendahl, D. Rule, P. Shadwell, J. D.

Bonadio respectively for each 60 days past that the practice has been operating; and all future pay at the time and one-half that this violation continues in practice.

5. The dates of Tampa and Sarasota jobs are not available but the men are employed and holding positions that have never been bulletined."

Rule 51, on which the claim here made is premised, provides, insofar as here material, as follows:

"When an employe considers he has been unjustly treated or that any of the rules of the Agreement have been violated, he or the representative of the Organization party to this Agreement shall submit a written statement of facts including the alleged unjust treatment or the rule or rules which he claims have been violated to the foreman if a yard employe; or to the shop manager if a repair shops' employe, within 60 days from the date of the alleged unjust treatment or alleged rule violation. * * * If no hearing is requested, the supervisor shall render decision within 30 calendar days from date of receipt of the claim of unjust treatment or rule violation. * * * If written decision by the respective yard foreman or repair shop manager is not rendered within 30 calendar days from date of receipt of the written complaint or within 30 calendar days after hearing is completed, as the case may be, the position of the employe shall be sustained."

We think the record establishes that Agent-Foreman Meeks, and not Superintendent W. H. Bradfield, was the "foreman" at St. Petersburg, but not at Tampa and Sarasota, to whom, in the first instance, Rule 51 requires a written statement of the facts upon which the claim of unjust treatment is based must be presented. If, as here, no hearing is requested the supervisor (foreman) must render a written decision within 30 calendar days from the date on which he receives the claim and, if he fails to do so, the position of the employe shall be sustained. Meeks rendered no such decision. It should be observed the provision that the claim "shall be sustained" is contractual.

While this prevents our considering the claim on its merits, the question of jurisdiction is always open for our consideration at any stage of the proceedings. As already stated, Foreman Meeks was not the "foreman" at Tampa and Sarasota within the meaning of Rule 51. Consequently a claim filed with Foreman Meeks for violation at either of those points would be beyond his authority and he did not have jurisdiction to act with regard thereto. In view thereof we find the claim, as it relates to Tampa or Sarasota, should not be allowed because not filed with any officer of the company who had authority to act thereon.

We have come to the conclusion that the claim made, as is relates to St. Petersburg, should be sustained under the provisions of the parties' agreement.

AWARD

Claim sustained as it relates to St. Petersburg.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December, 1956.