

Award No. 2672
Docket No. 2517
2-CGW-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY
SYSTEM FEDERATION NO. 73, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

DISPUTE: CLAIM OF CARRIER:

(9) Claim that the carrier has violated Rule 35 of the Shop Crafts Agreement effective February 1, 1924 (Reprinted June 1, 1954) by failing to provide a shelter for car inspectors to keep their rain clothing and boots in train yards at Kansas City, Missouri.

CARRIER'S STATEMENT OF FACTS: In letter dated September 19, 1955, signed by 16 general chairmen, request was made upon carrier's president for a joint conference to discuss various "unsettled matters". Conference began at Kansas City, September 29, 1955, at which time the subject of the instant dispute was included on a large docket of claims and grievances. At no time either prior to, during, or subsequent to conference, was claim handled with lower officers of appeal as provided by Rule 27 (a) of agreement (hereinafter referred to as Shop Crafts' Agreement) effective February 1, 1924 (Reprinted June 1, 1954) between the Chicago Great Western Railway Company and employes represented by organizations composing System Federation No. 73, reading as follows:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee of the organization signatory hereto or their representative."

Even though claim had not been handled with "foreman, general foreman, master mechanic or shop superintendent, each in their respective order", as required by Rule 27 (a) of the Shop Crafts' Agreement, carrier without prejudice thereto discussed claim with the employes in an effort to avert threatened strike action. However, claim was subsequently included in Strike Docket

tations or by means other than National Railroad Adjustment Board pursuant to Article V, Section 5, of the agreement of August 21, 1954, has been challenged by the carrier in the courts.

It is, therefore, our position that until the courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as amended, they are not properly referable to your Board.

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 record shows that the issue presented by the claim is now moot, so the claim will be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.