Award No. 3685
Docket No. 3715
2-ACL-EW-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Electrical Workers)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated Rule 19, of the agreement and accordingly the claim or grievance shall be allowed as presented.

2. That the Carrier violated the controlling agreement when it assigned the inspection, repairs and maintenance of the electrical parts of its locomotives arriving at and departing from Jacksonville, Florida, to the Jacksonville Terminal Company.

3. That the Carrier be ordered to compensate Electricians W. S. Boynton, and C. Paul, and Electrician Helper T. W. Cundiff, at their respective hourly rate for all time lost since August 4, 1958 account of being furloughed due to the improper transfer of the aforesaid work.

EMPLOYES' STATEMENT OF FACTS: Electricians W. S. Boynton, C. Paul and Electrician Helper T. W. Cundiff, hereinafter referred to as the claimants were furloughed on August 4, 1958 as a direct result of the Atlantic Coast Line Railroad, hereinafter referred to as the carrier, transferring work to the Jacksonville Terminal Company.

On August 4, 1958, the carrier transferred work performed by the claimants to the Jacksonville Terminal Company. The carrier's Moncrief Shop is located approximately three (3) miles from the Jacksonville Terminal. Prior to August 4, 1958, the carrier's locomotives were either moved from the terminal to the Moncrief Shop, or electricians and electrician helpers were sent to the terminal from the Moncrief Shop to perform their work on the carrier's locomotives.

Under date of September 15, 1958, Local Chairman A. C. Shott, submitted a time claim in writing to Master Mechanic G. R. Gibbs. Under date

of the steam engine. Jacksonville, Florida, is not the only point on this carrier where its mechanical forces have either materially diminished or disappeared. As previously stated, carrier's facilities at its Moncrief shops, Jacksonville, Florida, were designed for the maintenance of steam power and were antiquated and inefficient for the maintenance of diesel power. For these reasons arrangements were made to absorb the work formerly performed at Moncrief at Waycross, Georgia, located 75 miles north of Jacksonville, Florida; Florence, South Carolina, located 351 miles north of Jacksonville; and Lakeland, Florida, located 207 miles south of Jacksonville, where carrier has modern diesel shops. There was no assignment of the work to the Jacksonville Terminal Company as alleged by the electrican's organization.

When this very issue was first raised by System Federation No. 42, which includes all of the shop crafts on this carrier, a joint conference was held with all of the general chairmen and the conditions were fully discussed with them, and apparently all of the crafts, except the electricans, were satisfied their agreement had not been violated, as this claim from the electricans is the only one that has been filed by any of the mechanical crafts.

If, for discussion's sake, the work at issue was assigned to the Jacksonville Terminal Company as alleged, it is indeed strange it was absorbed by the Jacksonville Terminal Company without any increase in the number of electricians and helpers. This very fact should convince this Board that the entire claim is without merit and is an attempt of the organization to impede the progress and efficiency of this railroad.

The carrier reserves the right, when it is furnished with ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary in relation to all allegations and claims which may be advanced by the petitioner and which have not been answered in this initial submission.

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.

Parties to said dispute were given due notice of hearing thereon.

Under Rule 19(a) and (b), upon the failure of either party to act within 60 days "the matter shall be considered closed" unless the parties by agreement "extend the 60-day period for either a decision or appeal".

The record shows that there was no definite agreement in so many words to extend the period. But the third step appeal shows that on the sixty-sixth day after the appeal had been taken to the Superintendent of Motive Power, the General Chairman telephoned him, asked "if he were giving conference" on the claim, a conference was agreed up for February 2, seven days later, and was duly held; that three days later a decision was made denying the claim.

The evidence also shows that during this telephone conversation there were references to the 60-day period which the Superintendent considered as an assent to the extention of time for consideration and decision, and so indicated by a notation on his copy of his letter of November 25, 1958 to the General Chairman, which letter had been referred to during the conversations. He also noted there: "Mr. Corbin will be in WX for discussion of this claim on February 2, 1959."

The record contains no contention or suggestion that the telephone call to the Superintendent of Motive Power was made to claim a favorable decision by default; on the contrary, it was made to ask "if he were giving conference," and the conference was agreed to and participated in by both parties.

If the time limit had been insisted upon, the matter would have been closed and out of the Superintendent's hands, and he would have had no authority to consider or decide it; consequently there would have been no occasion to ask about, agree to or participate in a conference with him. The circumstances therefore evidence or constitute an agreement to extend the time limit, which had already run. No contention is made that under the Rule the agreement for extention must be made in any certain way, or before the 60 day period for decision has elapsed.

In their appeal to this Board the Employes stood entirely upon the procedural question and made no argument on the merits. The claim on the property was that certain electrical work was farmed out to the Jacksonville Terminal Company. The Carrier denied that any electrical work was farmed out and contended that it was lessened by reduced business and increased efficiency, and that the remainder was transferred to its shops at other points. Numerous claimed instances were cited as examples. Each party's contentions were denied by the other, but no evidence was submitted by either party. Having an unresolved question of fact we cannot conclude that the Claim should be sustained on the merits, assuming that they are before us although not argued on the appeal.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.