Award No. 4497
Docket No. 4360
2-RDG-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Firemen & Oilers)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Carrier improperly signed away its right to control and decided the fate of the employes set forth below at the Port Richmond Grain Elevator without negotiating said change with the Union:

John Smith	Michael McCafferty
James Childs	Joseph Foisey
James Cataldi	Joseph Kelly
William Higgins	Joseph Dolanski
Joseph Foisy	Joseph Kocskoden
Alex Jurkiewics	John Sodul
John Smith	Vincent McFadden
John Mason	Raymond O'Donnell
James Lucas	Vincent Newell
William Shelby	George Sweeney
Alexander Jurkiewicz	Walter Kozlowski
Frank McDonald	Ernest Lintner
Anthony Jurkiewics	Joseph Duffy
Bernard Konczyk	Max Karopatwa
William Higgins	

2. That the Carrier be ordered to:

(a) Reinstate all employes who were affected by management's unwarranted transfer of their Grain Operation Business.

(b) Reimburse all employes for all wage loss due to management's improper act, from the date they were terminated until they are appropriately reinstated.

(c) Reimburse the employes for all loss of benefits provided for in said current agreement caused by management's unilateral decision to discontinue the operation of the Grain Elevator.

EMPLOYES' STATEMENT OF FACTS: The claimants are classified as:

(a) Head Binman
(b) Binman
(c) Grain Handlers
(d) Oilers
(e) Car Riders

at Port Richmond Terminal, Grain Elevator, Philadelphia, Pa., where they were assigned to perform their respective duties governed by the miscellaneous employes agreement at Port Richmond and Port Reading, which includes the grain elevator coming within the jurisdiction of the firemen and oilers' craft.

The claimants were employed at the grain elevator in question by the Reading Company until July 1, 1962, at which time said employment was terminated by the Reading Company.

The carrier unilaterally wiped out the entire bargaining unit at this point without negotiation.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective July 16, 1942, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that there is in existence an agreement, the cover page reading as follows:

"AGREEMENT
between
Reading Company
and
International Brotherhood of Firemen, Oilers, Helpers,
Roundhouse and Railway Shop Laborers
Affiliated with
System Federation No. 109
Railway Employes' Department, AFL
governing
Miscellaneous Employes at Port Richmond
and Port Reading.
Effective July 16, 1942."

grievances. It is understood, however, that the parties may, by agreement, at any stage of the handling of a claim or grievance on the property, extend the 60-day period for either a decision or appeal, up to and including the highest officer of the Carrier designated for that purpose.

A claim may be filed at any time for an alleged continuing violation of any agreement, and all rights of the claimant or claimants involved thereby shall, under this rule, be fully protected by the filing of one claim or grievance based thereon as long as such alleged violation, if found to be such, continues. However, no monetary claim shall be allowed retroactively for more than 60 days prior to the filing thereof. With respect to claims and grievances involving an employe held out of service in discipline cases, the original notice of request for reinstatement with pay for time lost shall be sufficient.

This rule recognizes the right of representatives of the organizations, parties hereto, to file and prosecute claims and grievances for and on behalf of the employes they represent."

Carrier submits that no protest or claim was at any time received by the officers of the local level concerning carrier's decision to lease the grain elevator, nor was a request made for conference thereon as prescribed by Rule 13 of the applicable agreement. Carrier, therefore, maintains that this claim was not properly progressed on the property in accordance with recognized and agreed upon grievance procedures as prescribed by Rule 13 and should be dismissed by the board.

If not dismissed, it is the position of carrier, as stated hereinbefore, that it was not under any obligation by agreement or understanding to continue the operation of the Port Richmond Grain Elevator, nor was it required to negotiate its decision to lease such property with System Federation No. 109 or its affiliated organizations. It is, therefore, the position of carrier that since no rules of agreement were violated, and none has been cited by the organization in support of their position, the claim as presented is without merit or support and carrier respectfully requests the board to deny it in its entirety.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The jurisdiction of the Second Division to consider this dispute has been challenged on the grounds that the pertinent provisions of Section 3, First (h) of the Railway Labor Act — as cited in part below — do not confer jurisdiction on this Division.

"Second Division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheetmetal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, powerhouse employes, and railroad-shop laborers."

The job classifications of the Claimants were as follows:

Head Binman, Binman, Grain Handlers, Oilers and Car Riders.

The Claimants had been employed at the Grain Elevator which the Carrier operated for many years at the Port Richmond Terminal, Philadelphia, Pennsylvania, and were covered by a collective bargaining "Miscellaneous Employes" Agreement effective July 16, 1942 — corrected January 1, 1955.

On July 1, 1962, when the Carrier leased the Grain Elevator to the Port Richmond Elevator Company, Inc., the Organization claimed that the Carrier's unilateral action wiped out the entire bargaining unit at the Granary, including "the agreement rights of the claimants". The Organization further claimed that the Carrier "failed to fulfill its mandatory obligation to negotiate with the Union regarding its decision to terminate the positions of the claimants by merely signing a lease" and that the Carrier's action was in violation of Section 2, Seventh, of the Railway Labor Act.

The Carrier's position was "that it is under no obligation by rule, practice or understanding with the Organization to continue the operation of the grain elevator or to retain employes thereat that were affected by the lease of that facility".

Although the Organization named 29 Claimants, the correct number is 25 because 4 of the Claimants were named twice. Shortly after the lease became effective, the status of the Claimants was as follows:

16 accepted positions with the Lessee
2 retired
2 were not hired by the Lessee or Carrier
5 accepted service with the Carrier

The Organization argued that the Carrier cannot, for the first time, raise the question of jurisdiction in its arguments before the Referee. It was the Organization's position that the jurisdictional question was untimely and improperly presented, and that the case must be determined only on the issues existing when the case was "deadlocked".

It is the Division's disposition that failure to raise a jurisdictional issue on the property or when the case was deadlocked does not preclude that issue from being introduced at this determinative stage. The question of jurisdiction may properly be raised at any stage of a proceeding before this Division, and it takes precedence over all other claims or issues.

Just as a man going north cannot reach his destination by traveling south — so this Division cannot make a valid ruling unless its authority to do so has been first established. Consequently, the question of jurisdiction must be answered.

The job classifications of the Claimants — as stated above are — Head Binman, Binman, Grain Handlers, Oilers and Car Riders. According to the language of Section 3 First (h) of the Railway Labor Act, supra, this Division is only empowered to decide "disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of the foregoing, coach cleaners, powerhouse employes, and railroad-shop laborers". The occupations and job classifications of the Claimants are not covered by the above language.

Consequently, this Division lacks jurisdiction and, without prejudice to the merits of the controversy, we must dismiss the claim.

AWARD

Claim dismissed, without prejudice, for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of May, 1964.

OPINION OF LABOR MEMBERS TO BE ATTACHED TO AWARD 4497

The Second Division, having determined that it lacks jurisdiction over the employes involved in Award 4497, the case should be transferred to the Fourth Division. In a similar situation the Third Division, because of lack of jurisdiction, transferred two cases to the Second Division and the latter Division, having determined it had jurisdiction, rendered Awards 1 and 10 thereon.

The National Railroad Adjustment Board will soon have been in existence thirty years. Section 3 First (h) of the Amended Railway Labor Act sets forth the jurisdiction of the respective Divisions of the Board (See Order of Railway Conductors of America v. Swan 67 S. Ct. 405) and whenever a Division shall determine that the employes party to a dispute submitted to the Division are not employes within the jurisdiction of the Division, the dispute shall then be transferred to the Division having jurisdiction.

C. E. Bagwell
T. E. Losey
R. E. Stenzinger
E. J. McDermott
J. B. Zink