

Award No. 5146
Docket No. 4945
2-SOU-EW-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Ben Harwood when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Southern Railway System, violated the current agreement between the Electrical Workers, as represented by the International Brotherhood of Electrical Workers, and the Carrier, when the Carrier hired two men and placed them on electricians' jobs for which they were not qualified.

2. That the Carrier be compelled to remove the two men from the electricians' jobs that they are currently attempting to work and replace them with qualified electricians.

EMPLOYEES' STATEMENT OF FACTS: The Southern Railway System, hereinafter referred to as carrier, employed B. J. Taylor and D. H. Callaway at Citico Diesel Shop, Chattanooga, Tennessee, and placed these men on electricians' jobs. These men were also placed on the electricians' seniority roster at Citico Shop, Chattanooga, Tennessee. The two referred to men have not served an apprenticeship or had any actual experience in any phase of electrical work as called for in rules 45 and 135 of the current agreement between the carrier and employees as represented by the International Brotherhood of Electrical Workers.

This dispute has been handled with all officers of the carrier designated to handle such disputes, all of whom have declined to make satisfactory adjustment.

The agreement effective March 1, 1926 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is respectfully submitted that the carrier erred when they employed Taylor and Callaway as electricians when neither possessed the qualifications required by the controlling agreement.

electrical workers' class or craft here in evidence. The board does **not**, as heretofore pointed out, have any jurisdiction over the claim which the International Brotherhood of Electrical Workers here attempts to assert. Certainly it would have no jurisdiction over part 2 of the claim even if it had jurisdiction over part 1 of the claim, which it does not.

The evidence is conclusive that the current agreement between carrier and its electrical workers, as represented for purposes of the Railway Labor Act by the International Brotherhood of Electrical Workers, has **not** been violated.

**THE POINT AT ISSUE HAS ALREADY BEEN CONCEDED
BY THE INTERNATIONAL BROTHERHOOD
OF ELECTRICAL WORKERS**

As evidenced herein, to date carrier has hired and trained seventeen electricians. Eleven have been employed at Chattanooga and six in Atlanta. Of the eleven electricians employed in Chattanooga the International Brotherhood of Electrical Workers has questioned only the qualifications of D. H. Callaway and B. J. Taylor. It has conceded that the others are qualified electricians, although none of the eleven electrician trainees employed in Chattanooga "had four years' practical experience in electrical work" before being hired by the company as electricians. They were however qualified to perform the required work and assume the responsibilities of the positions to which assigned. It is thus obvious that the electrical workers' organization has conceded the point here at issue.

CONCLUSION

Carrier has shown:

(a) That the board does **not** have jurisdiction over the here involved dispute as it involves matters not subject to the collective bargaining requirements of the Railway Labor Act.

(b) The dispute submitted to the board is not the same protest and request as that made and handled on the property.

(c) The current agreement between carrier and its electrical workers has **not** been violated.

(d) The point here at issue has been conceded by the International Brotherhood of Electrical Workers.

The board not having jurisdiction over the here involved dispute is left with no alternative but to dismiss it for want of jurisdiction.

(Exhibits not reproduced.)

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.

In the matter here considered, the claim of Employees states: (1) that Carrier violated its agreement with the Electrical Workers by hiring two men and placing them on electricians' jobs for which they were not qualified; and (2) that, as a consequence, Carrier should be compelled to remove the two men from said jobs and replace them with qualified electricians.

At the outset, we are faced by the fact that said claim asks this Board to compel the Carrier to remove from employment two men who are unnamed, in other words who are not in any way identified within the body of the claim, something which certainly fails to comply with applicable provisions of the Railway Labor Act, the Rules of Procedure of the National Railroad Adjustment Board and those of its Second Division.

Later on, in Employees' Statement of Facts, two men, B. J. Taylor and D. H. Callaway, are designated as having been placed on the Electricians' Seniority Roster at Citico Diesel Shop, Chattanooga, Tenn., and it is averred that they "have not served an apprenticeship or had any actual experience in any phase of electrical work as called for in Rules 45 and 135 of the current Agreement."

So again, we are faced by a requirement of the Board (Circular B of the 2nd Division) that when disputes involving seniority are docketed by the Division all parties who may be affected will be advised of date set for oral hearing requested by either or both parties, whereas no such notice appears to have been given; furthermore there is no showing of compliance with Rule 36.

In this situation, despite reluctance to delay eventual decision on the merits of this controversy between the Employees and Carrier, we are forced to conclude that this claim as now presented cannot invoke the jurisdiction of this Board and that our only recourse is to order its dismissal.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 28th day of April, 1967.

DISSENT OF LABOR MEMBERS TO AWARD NUMBERS 5146 AND 5147

It is abundantly clear that the referee was looking for any reasons to avoid his responsibility to rule on the merits of the issues before him when he found the following:

"At the outset, we are faced by the fact that said claim asks this Board to compel the Carrier to remove from employment two men who are unnamed, in other words who are not in any way identified within the body of the claim, something which certainly fails to comply with applicable provisions of the Railway Labor Act, the Rules of Procedure of the National Railroad Adjustment Board and those of its Second Division."

The record indicates that there was no dispute between the parties as to who the two employees were as the Carrier, in their Ex Parte Submission "Statement of Facts" starting on page 8 and continuing through page 23, quote the letters of correspondence held on the property between the Organization and the Carrier in this dispute, and on page 8 the following appears:

"On June 25, 1964 following the employment of D. M. Walker, B. L. North, Claude Hill, Jr., B. J. Taylor, and D. H. Callaway at Chattanooga Diesel Shop the electrical workers' Local Chairman addressed the following letter to Mr. J. C. Waddle, Manager of that shop:"

The Carrier in this statement proves that there were five employees hired on June 25, 1964 as electrical workers which resulted in the initial claim being made by the Organization protesting these five employees did not have the qualifications of an electrician as provided for in Rule 135 of the Agreement.

Subsequent to this claim it was found that three of the employees did have the qualifications as the letter dated August 31, 1964 from General Chairman Williams to Mr. Cox, Director of Labor Relations, quoted on pages 10 and 11 of the Carrier's submission reads in part as follows:

"... in his original protest, Mr. Crews made reference to five men but since the origin of this protest, three of the five men have satisfactorily proved their qualifications as electricians. As a result of the foregoing we are protesting the placing of two men, D. H. Callaway and B. J. Taylor, in the capacity of electricians . . ."

The referee then went looking for another excuse to support his avoiding his responsibility to rule on the merits of the issue before him when he found the following:

"So again, we are faced by a requirement of the Board (Circular B of the 2nd Division) that when disputes involving seniority are docketed by the Division all parties who may be affected will be advised of date set for oral hearing requested by either or both parties, whereas no such notice appears to have been given; furthermore there is no showing of compliance with Rule 36."

Docket Number 4945 was clearly within the Board's jurisdiction, was properly before it and ripe for consideration and decision on its merits. The Board, not the parties, committed an error when they failed to comply with their Circular "B" and when this error was found prior to an award being rendered, the Board had the responsibility to correct their own error so that they could perform their statutory duty by hearing the claim on its merits.

To do otherwise is to deprive the employees of their statutory rights and constitutes a refusal of the Board to perform its statutory duties.

The referee also states that there was no showing of compliance with Rule 36. We have searched the record and can find no reference to Rule 36 being involved in this dispute.

Therefore, we dissent to the majority holding in Award Numbers 5146 and 5147.

D. S. Anderson
C. E. Bagwell
E. J. McDermott
R. E. Stenzinger
O. L. Wertz