



Award No. 5729

Docket No. 5590

2-BS-UMWof AM '69

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John H. Dorsey when award was rendered.

PARTIES TO DISPUTE:

DISTRICT 50, UNITED MINE WORKERS OF AMERICA

BIRMINGHAM SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: The Organization claims that time and one-half pay, for working outside regularly bulletined hours under Article 6 of the current agreement, should be allowed on both Saturdays and Sundays subsequent to April 1, 1966 for car repair employees Perry Galemore, E. H. Tillman, L. L. Woods, Melvin Tipton, T. W. Hyche and J. D. Wilson; and that time and one-half pay should be allowed on Saturdays subsequent to April 1, 1966 for car repair employee Isiah Lewis.

The Organization claims that the Carrier violated Article 1—Establishment of Shorter Work Week—of the current agreement when the above car repair employees' assignments were bulletined to include Saturdays and Sundays as work days.

EMPLOYEES' STATEMENT OF FACTS: On March 30, 1966 Birmingham Southern Railroad Company posted a bulletin, a copy attached hereto marked Exhibit "A", to all Car Department employees effecting a change in schedule at 3:00 P.M. on Friday, April 1, 1966, which resulted in changing off days of the employees, which is not in accordance with, page 3, Article 1, Paragraph (b) copy attached marked Exhibit "B", the working agreement between the Copy and the Union.

Since the posting of this bulletin, Exhibit "A", and the executing of same the Birmingham Southern Railroad and responsible personnel, henceforth referred to as the carrier have adversely changed the working conditions of certain employees of the car department, it is obvious that the carrier effected this change in working conditions in clear conflict with the aforementioned agreement. These affected employees were exclusively engaged in performing light and heavy repair work in the car shop on a Monday through Friday with Saturday and Sunday as off days. This had been the practice since the signing of this agreement.

Previous to the "Shorter Work Week Agreement", Sunday was the only off day for the car shop employees.

Article 1, Paragraph (b), Union's Exhibit "B", "The Five Day Position", has been the established practice ever since the forty (40) hour work week has been established, by Article II, Section 1, (b), Exhibit "C",

The Carrier submits that the Organization cannot be serious in the claims presented in this dispute, when it also is working under an exactly opposite understanding—at its own request—to fill Saturday and Sunday work in light repair service.

In conclusion, the Carrier has shown that the service, duties or operations of light or running car repairs are and have always been necessary to be performed seven days per week; that such seven-day positions are in keeping with the current agreement, and that the Carriers continuous operations, competitive position, service to shippers and compliance with governmental regulations depend on the maintenance of the latitude which was granted to Carrier's by the Organizations in consideration of the 40-Hour Work Week rules of 1949.

(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 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 lacks jurisdiction for failure of Petitioner to comply with Circular No. 1.

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

Carrier in its Submission, moves for dismissal for failure of Petitioner to perfect its petition to the Board in substantive compliance—particularly, prescribed content of a STATEMENT OF CLAIM—with the procedural requirements of Circular No. 1 "Organization and Certain Rules of Procedure," which the Board in the exercise of its rule making power (Section 3, First (V) of the Railway Labor Act, as amended) promulgated on October 10, 1934. Petitioner filed no Rebuttal Submission.

Petitioner's letter of intent to this Division's Executive Secretary, dated October 3, 1967, reads:

"In accordance with our understanding of Circular No. 1, issued October 10, 1934, National Railroad Adjustment Board, Organization and Certain Rules of Procedure.

Due to the parties failure to agree on a statement of facts concerning a dispute arising under the current agreement, dated June 29, 1954, you are hereby notified that it is the intent of the Union to file an ex parte petition to the Second Division of the National Railroad Adjustment Board so that a decision may be obtained in this dispute. The dispute concerns the posting of a bulletin by the Birmingham Southern Railroad to all Car Department employees affecting a change in Schedule at 3 P.M. on Friday, April 1, 1966."

We find that the letter does not contain a STATEMENT OF CLAIM.

Petitioner's Submission, which it captions "STATEMENT OF FACTS," does not contain a STATEMENT OF CLAIM.

Circular No. 1 having been issued in the exercise of the Board's rule making power, vested by statute, has the force and effect of law. Compliance with its mandates, by a petitioner, is an indispensable condition precedent to invoke the Board's justification. We find Petitioner failed to satisfy the condition. Carrier's motion to dismiss is GRANTED.

A W A R D

Dismissed for lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 27th day of June, 1969.