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Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

Award No. 6427  
Docket No. 6268  
2-URR-USWA-'73

The Second Division consisted of the regular members and in addition Referee Irving T. Bergman when award was rendered.

Parties to Dispute:

( Union Railroad Company  
(  
(  
( United Steelworkers of America (AFL-CIO)

Dispute: Claim of Carrier:

"A dispute exists as to whether or not the Carrier has the right (as set forth in Carrier's Statement of Facts) to establish a car inspector and car repairman position at the Classification Yard under the "Status Quo Notice" received from Mr. T. A. Tracy, Executive Secretary of the National Mediation Board dated February 23, 1971."

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.

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

Each party served notice upon the other pursuant to section 6 of The Railway Labor Act that it desired to negotiate wages, hours and conditions of work. Upon failure to reach agreement, the parties jointly requested the National Mediation Board to take jurisdiction of the dispute and to assign a mediator. This was followed by receipt of a telegram from the Mediation Board directing the parties attention to the status quo provisions of the Railway Labor Act. Subsequently, the Carrier established two carmen positions. The Organization claimed that establishing the positions was a violation of the status quo, and that the Organization would picket for the purpose of withholding the services of the two carmen.

The Carrier claims that it explained to the Organization that it was acting strictly according to the existing agreement; that establishing the two positions would result in recalling two carmen from furlough; that there would be no change in existing wages, hours and conditions of work.

The Carrier served a 30 day Notice of its intention to file the claim with this Board with copy to the Organization as required by the rules of this Board. The Organization declined to file a submission.

The Carrier's submission contains findings from a number of prior Awards which hold that this Board does not have authority to create a rule which is not in the Agreement between the parties; that this Board's authority is limited to interpretation and application of the Agreement. This finding is so well established that it does not require further comment.

It is also urged on behalf of the Carrier that where no submission is presented by the Organization or contentions are not answered, we must find in accordance with the undisputed facts as presented in the Carrier's submissions, Second Division Awards Nos. 3620, 4665, 4833, 5937, and First Division Awards Nos. 21971, 21972, 21973. The only one of these cases which was initiated by the Carrier is No. 3620 in this Division. In that case, the dismissed employee stated that her case was before the California Fair Employment Practices Commission and she wished it to remain with the Commission. Nevertheless, this Board took jurisdiction.

It is now urged on behalf of the Organization that this Board does not have jurisdiction because the matter is within the jurisdiction of the Mediation Board so that we have no authority to Act. Reliance for this position is based upon Section 3 (i) and Section 6 of the Act.

The relevant portion of Section 6 states, in substance, that when the Mediation Board is involved in a case where changes in the Agreement are in issue, "---rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board,---."

Section 5, of the Act, entitled Functions of Mediation Board provides in part, that the services of the Mediation Board may be invoked in a dispute over changes in rates of pay, rules or working conditions, or, in any other disputes not referable to the National Railroad Adjustment Board.

Section 3 (i) of the Act provides, in effect, that disputes shall be handled in the usual manner up to and through the Chief Operating Officer of the Carrier designated to handle such disputes, and upon failing to reach adjustment in this manner, either party may refer the dispute to the Adjustment Board.

It should be noted that the General Purposes of the Act as set forth in Section 2 are, among others, to avoid any interruption to the operation of a Carrier engaged in Commerce, and to provide for the orderly settlement of disputes. Among the General Duties listed under Section 2 of the Act is the duty to exert every reasonable effort to maintain agreements in order to avoid any interruption to the operation of the carrier, and to decide disputes expeditiously by conference between authorized representatives of the parties. Paragraph sixth, Section 22, makes it the duty of the parties to respond by conference within specified time limits, upon request by either party in the event of a dispute, and, "That nothing in this Act shall be construed to supersede the provisions of any Agreement (as to conferences) then in effect between the parties.", parenthesis added.

There appears to be a clearly stated mandate to the parties to act in a manner which will avoid any interruption to the flow of commerce in the operation of any carrier. To that end, the Act does not preempt the dispute settlement provisions of an existing agreement. It follows, therefore, that the issue of the status quo is a dispute to be decided through the machinery provided by the agreement, the final step of which is petition to the Adjustment Board.

It is not evident from reading Award No. 3620, whether or not the parties in that case went through each step with the designated representatives before the carrier's ex parte submission to this Board. However, the Act spells out the duty to confer up to and through the Chief Operating Officer of the Carrier. It would not be realistic and it would not effectuate the purpose of the Act to deny jurisdiction because one party refused to participate in the steps prior to reaching the Chief Operating Officer.

We find that this Board may take jurisdiction of the dispute.

None of the items listed in Exhibit A and B, submitted by the parties for negotiation of changes in the existing Agreement affect or are affected by the Carrier's establishing the two carmen positions in dispute.

We find that by establishing the two carmen positions thereby providing employment for two furloughed carmen, the status quo was not affected.

The carrier is expected to maintain normal operations during the mediation stage within the framework of and consistent with the Rules of the existing Agreement, as they are, without change. In the absence of any showing to the contrary by the Organization, we find that there has been no violation of existing Rules of the Agreement.

A W A R D

Claim Sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: E. A. Killean  
Executive Secretary

Dated at Chicago, Illinois, this 11th day of January, 1973.