Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 6773
SECOND DIVISION Docket No. 6585
2-C&O-CM-'74

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

Parties to Dispute: (System Federation No. 41, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(The Chesapeake and Ohio Railway Company

Dispute: Claim of Employes:

1. That Freight Car Repairer, W. E. Carman was unjustly dismissed from all service of the Chesapeake and Ohio Railway Company effective April 28, 1972 as a result of investigation held in the office of the Car Foreman, Fostoria, Ohio, April 12, 1972 at 10:00 a.m. The discipline administered was very excessive.

2. Accordingly Carman is entitled to be restored to service with seniority rights, full service rights and vacation rights unimpaired.

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 waived right of appearance at hearing thereon.

The basic facts are not in dispute. Carrier's policy with respect to garnishment and attachment of wages reads as follows:

> "Causes for garnishments and attachments will be investigated by supervising offices and unless there are extenuating circumstances that would excuse an employee, garnishments and attachments for more than two indebtedness to the same creditor or garnishments and attachments from more than two creditors will be sufficient cause for dismissal." (Emphasis retained)

The following creditors of the Claimant served garnishment notices upon the Carrier:

5/21/71-Andrew Tottingham for $144.00, costs included

9/15/71-Andrew Tottingham for $98.99 costs included

11/23/72-Andrew Tottingham for $37.95, costs included

3/6/72-Hummel Motors for $141.84, costs included.

It is obvious that the first three garnishments were by the same creditor and for the same original indebtedness. Each time a garnishment was served, a payment was made and the indebtedness was satisfied on or about November 23, 1971.

Carrier's policy probably intended to treat each garnishment as a separate and distinct indebtedness. That is probably a logical interpretation of the policy statement. But where a fule or condition is promulgated unilaterally by the Carrier the meaning and intent of the language must be construed in the light of its literal meaning. The words must be given their common and ordinary meaning with emphasis against the party using them; in this case the Carrier. An indebtedness is a state of owing something to another. It is a single obligation. Here it was Claimant's obligation to Andrew Tottingham. It was the same indebtedness on May 21, 1971, September 10, 1971 and November 23, 1971 only in reduced amounts. Irrespective of the Carrier's intent, we are obliged to conclude that garnishments "from more than two creditors" did not exist on March 6, 1974 and thereafter when the Claimant was dismissed from service.

Claimant had been an employe of the Carrier for 22 years prior to his dismissal with no prior personnel record so seriously derogatory as to justify consideration for disciplinary action. Even if Carrier's interpretation of its garnishment and attachment policy was accepted, the penalty of discharge is too severe in view of the facts that all of the obligations were paid, Claimant's long and faithful service record and the undisputed fact that the garnishments were occasioned because of Claimant's accute domestic difficulties.

No claim for lost earnings has been filed. None is claimed here. Claimant seeks only to be reinstated as an employe of the Carrier with full rights preserved.

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A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1974.

CARRIER MEMBERS' DISSENT TO AWARDS 6774, 6775, 6776, 6777, 6778

(Referee Shapiro)

Carrier Members respectfully submit that these awards are invalid on jurisdictional grounds.

The author of these awards refuses to recognize and enforce clear agreement provisions which all parties to this dispute frankly concede are binding upon them and those provisions establish the usual manner for the handling of such claims. The provisions read:

> ". . . no . . representative of organizations signatory hereto, will individually request management to take work from one craft and give it to another craft . . .
>
> ". . . we will find a way to reach an agreement and settle any disputes that may arise between any two crafts signatory hereto, involving jurisdiction of work, and when such dispute has thus been settled, then request will be presented to management for conference to negotiate the acceptance by management of the settlement thus made." (Underlining added.)

We do not believe the parties could have found language that would have more clearly expressed an agreement absolutely prohibiting any of the signatory organizations from individually presenting to Carrier a claim involving jurisdiction of work and another signatory organization. Furthermore, the record leaves no room whatever to doubt the fact that these clear provisions are an agreement that binds all of the parties to the instant dispute. Carrier and the Electricians both cite and rely on them and the petitioning Sheet Metal Workers concede their existence, never question their complete validity, never claim they have been complied with, but attempt to avoid their effect in these particular cases by advancing the incredible argument that these cases do not come under said agreement provisions because the piping work involved is allegedly reserved to Sheet Metal Workers by their Classification of Work Rule. The complete answer to this argument is that the parties had before them the Classification of Work Rules when they agreed to said provisions, yet they saw fit to establish no exception to their unconditional commitment.

These awards significantly do not adopt this absurd argument of the Sheet Metal Workers. Rather, the author contrived objections of his own to the crystal clear agreement, referring to the obligation of the parties thereunder as an "alleged contractual obligation", citing the irrelevant fact that Carrier was not a party to the "Miami Agreement" and concluding that "Appendix 'A' makes no provision for circumstances where an attempt by the Organizations to resolve an alleged jurisdictional dispute fails." (Underlining added.)

In view of the confusion that is so abundantly apparent in these awards, we wonder what is meant by this reference to an "alleged jurisdictional dispute"; therefore, we will avoid that terminology and speak in the clear, unambiguous and absolute terms of the agreement provisions that are controlling. Those provisions are that no signatory organization "will individually request management to take work away from another craft" and that the signatory organizations "will find a way to reach an agreement and settle any dispute that may arise between any two crafts signatory hereto, involving the jurisdiction of work, and when such dispute has thus been

"settled, then request will be presented to management . . ." Certainly, these claims come under the ban of those provisions, and the author of these awards has simply refused to recognize said provisions and give them their intended effect.

As the Electricians point out in their third party submission, Section 3 First (i) of the Railway Labor Act provides that disputes cannot be brought to this Board until they have been handled on the property in the usual manner; and the usual manner for handlinga jurisdictional dispute of the type involved in these claims makes it mandatory that agreement be reached by the two organizations claiming the work before any claim can be submitted to Carrier and further processed.

This Board has consistently and without exception recognized that a rule of procedure such as that quoted above must be complied with as a condition precedent to properly invoking the jurisdiction of this Board. In Award 2898 which is cited in Award 6774 as authority for assuming jurisdiction in the instant cases, the Board expressly found that: "The said dispute was settled under the jurisdictional dispute procedure of February 15, 1940 between the organizations by agreeing that the work belonged to the Sheet Metal Workers." Certainly that award is no authority for assuming jurisdiction in the instant cases where no agreement was reached and it was the petitioning organization that terminated the negotiations of the parties. See Awards 2747 through 2780 (Smith), 2931 through 2936 (Kiernan), 5789, 5793 (Coburn), 6759, 6763, 6765 (Eischen).

The cited Eischen awards were released a few days after release of the proposals in the instant cases and thus represent the latest expression of any Referee concerning the jurisdictional question presented in these cases. It will be observed that the last Eischen award (6765) involved the same Petitioner, the same Carrier, and the same agreement that are involved in these cases. This award correctly concludes:

> "We have often decided cases of the type presented herein and we can see no justification for now deviating from that clear precedent. See Awards 2931, 2936, 5789 and 5793. We cannot ignore valid and legally operative agreements entered into in good faith by the parties, notwithstanding subsequent changes in alliances and allegiances. In the instant case, such an agreement contemplates the submission of such dispute to attempted mutual resolution among the Organizations involved with conference negotiation with management for acceptance of such inter-Organizational settlement.
>
> "We find that the instant dispute is referrable properly to the resolution machinery established by Appendix A of the Agreement and is prematurely before our Board for adjudication pursuant to the provisions of Section 3, First (i) of the Railway Labor Act, as amended, and Circular No. 1 of the National Railroad Adjustment Board.
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> "Consistent with the foregoing, we are without jurisdiction to decide this claim on its merits. Accordingly, it will be dismissed without prejudice." (Underlining added.)

These claims also should have been dismissed for lack of jurisdiction because they have not been handled in the usual manner.

J. T. Naylor
H. A. McPhadrunst

G. T. Horsley
W. B. Jones
G. M. Youhn