Award No. 1125
Docket No. 1030
2-IGN-SAU&G-FT-'46

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (FEDERATED TRADES)

INTERNATIONAL-GREAT NORTHERN RAILROAD COMPANY

SAN ANTONIO, UVALDE & GULF RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That outside of the letter and intent of the controlling agreement, the carrier has improperly established as a working condition for apprentices the participation in a technical training course sponsored by the Railway Educational Bureau at a cost to each of $2.00 per month.

2. That the carrier be ordered to—

(a) Cease and desist from deducting out of the wages of each of these apprentices the sum of $2.00 per month.

(b) Reimburse each of these apprentice victims the sum of $2.00 per month retroactive to June 1, 1942.

EMPLOYES' STATEMENT OF FACTS: The agreement between the carrier and System Federation No. 14, contains comprehensive regulations for the employment in the respective trades of regular and helper apprentices, as well as the manner in which they shall progress through the trades in which engaged, applicable rates of pay, and, that they graduate as journeymen mechanics of the trade in which engaged at the expiration of four years for regular apprentices and at the expiration of three years for helper apprentices.

The carrier contracted with the Railway Educational Bureau, Omaha, Nebraska, for a technical training apprentice course. These apprentices are required to perform under said contract outside of their regular shop hours and at a cost of $2.00 per month.

These apprentices are required to meet certain stipulations in said contract between the carrier and the Railway Educational Bureau or subject themselves to discipline by either the carrier or the Railway Educational Bureau, or both, entirely outside of the agreement between the carrier and System Federation No. 14.

System Federation No. 14, the duly authorized representatives of these apprentices, is not a party to the aforesaid carrier and educational bureau

standard of its service, and where such condition of employment, as in the case under consideration, is not in conflict with rules of the current working agreement between the carrier and its employes, is clearly a managerial prerogative; and that being so, any such condition of employment established by the carrier is not, in our opinion, subject to nullification by other than the carrier.

5. The position of the carrier is supported by the following which is quoted from "Opinion of Board" (seventh paragraph) in Award No. 2481 involving the deduction of premiums for group life insurance:

> "It is not the province of the National Railroad Adjustment Board to vacate valid contracts any more than it is its province to create new ones. If the contract as made has become burdensome, it is clearly a matter for negotiation. This Board is powerless to relieve from valid contracts merely because one of the parties thereto has become dissatisfied with its provisions."

The foregoing is without prejudice to the position of the carrier that this alleged dispute is not properly before or subject to a decision by the Board and, accordingly, should be dismissed for lack of jurisdiction.

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.

The parties to said dispute were given due notice of hearing thereon.

The carrier does not have the right to enforce a contract with respect to the employment relationship which is inconsistent with the terms of the controlling agreement, and it makes no difference that an employe may have by contract agreed to such a rule. J. I. Case v. National Labor Relations Board; 64 Sup. Court Rep. 576: Order of Railroad Telegraphers v. Railway Express Agency, 64 Sup. Court Rep. 582.

The mere fact that there is nothing in the agreement which expressly forbids a particular practice is not controlling if in fact such a practice is inconsistent with the agreement or to use the words of the Supreme Court "may provide a leverage for taking away other advantages of the collective contract." The requirement of the carrier that apprentice employes should each pay the sum of $2.00 per month for the training course sponsored by the Railway Educational Bureau was a violation of the agreement.

AWARD

Claim 1 sustained.

Claim 2 (a) sustained.

Claim 2 (b) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of March, 1946.