Award No. 1731
Case No. 2480
2-MP-FT-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Upon failure of the Division to agree upon the procedural steps to be followed in the handling of this case, the Labor Members invoked the services of the National Mediation Board for the appointment of a referee to break the deadlock, as provided in Section 3, First (L) of the Railway Labor Act. Upon certification, the National Mediation Board appointed Harold M. Gilden for that purpose.

Following is the case in question, the opinion and award of the Second Division with Referee Gilden sitting as a member thereof.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Federated Trades)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement the Carrier improperly assigned other than Shop craft employes to make repairs to mechanical tie tamping machine MT 13 in the roundhouse at Osawatomie, Kansas on December 21, 26, 27, 28 and 31, 1951.

(2) That accordingly the Carrier be ordered to additionally compensate the employes hereinafter listed in the amount set forth following each list of employes.

Machinist R. R. Magill
Mach. Helper C. L. Chancellor

Machinist C. D. Randall
Mach. Helper Glenn Stevens

Machinist George Weekly
Mach. Helper, C. C. Burns

Machinist C. O. Icenogle
Mach. Helper C. I. Burnett

Machinist G. W. Ricketts
Mach. Helper J. A. Landers

Each in the amount of six (6) hours and forty-eight (48) minutes at the rate of time and one-half.

Sheet Metal Worker R. C. Diehm

In the amount of four (4) hours at the rate of time and one-half.

Boilermaker (name to be furnished following final determination.)

In the amount of four (4) hours at the rate of time and one-half.

Electrician (name to be furnished following final determination.)

In the amount of four (4) hours at the rate of time and one-half.

OPINION OF THE DIVISION: The Division deadlocked, in this matter, both on a motion to docket and an amendment to same providing for notice to a certain third party alleged to have conflicting rights and interests. It is to the resolving of that impassé, entirely separate and apart from any consideration of the merits, that this opinion is directed.

Whatever our own views may be regarding the meaning to be given to "involved" as that word is used in the content of Section 3, First (j) of the Railway Labor Act, the same must yield to the authoritative impact of previous court decisions adjudicating this identical subject. In a fairly extensive series of cases, the Federal Courts steadfastly have maintained that the giving of notice by the National Railroad Adjustment Board to interested third parties is not only contemplated by this section of the Act, but is a jurisdictional prerequisite to the exercise of the statutory power conferred on such Agency. See Hunter vs. Atchison, Topeka and Santa Fe Railway, 188F (3d) 294 (CCA); Brotherhood of Railway Trainmen vs. Templeton 181 F (2d) 527; M-K-T Railroad Co. vs. NRAB (US DC, ND of Ill. Civil No. 50 C 684) 18 IC 65,814; affirmed 188F (2d) 302 (CCA). Also to the same effect is Illinois Central Railroad Company vs. NRAB, Third Division, et al., (US DC, ND of Ill. Civil No. 53 C 1245) now pending review by Circuit Court of Appeals.

In the face of such an overwhelming weight of legal precedents, it would be extremely short sighted were we to advocate a policy running counter to the aforesaid explicit pronouncements of the judiciary, thereby jeopardizing the ultimate validity of any award to be later made by this Division on the merits of the instant controversy. Under the prevailing judicial viewpoint the assumption of such risk in this particular submission is neither fitting nor proper.

We cannot agree, however, that the pending disagreement on the notice requirements should constitute a sufficient basis for impeding or otherwise delaying this Division's action in formally docketing this case. Our views on correct docketing procedure, as expressed in Award 1639, are directly in point here.

AWARD

1. This Division forthwith shall docket this case.

2. That immediately following the docketing of said case, the Executive Secretary shall advise the Brotherhood of Maintenance of Way Employes of the pendency of these proceedings, and give them due notice of any and all hearings in connection therewith.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 15th day of December, 1953.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1731

The majority's holding that notice should be given to the Brotherhood of Maintenance of Way Employes is erroneous inasmuch as the dispute covered in the instant claim relates only to the proper interpretation and application of the agreement between System Federation No. 2, Railway Employes' Department, A. F. of L. (Federated Trades) and the Missouri Pacific Railroad Company.

This Division has held in a number of cases, as have the courts, that this Board's function is limited to the interpretation and application of the agreements upon which the claims are based, and that questions of the validity and enforcement of the agreements as so interpreted are for other tribunals. Nor can the Division revise or amend agreements so as to resolve conflicting or overlapping coverage of agreements of different organizations in cases of this sort. Section 6 of the Railway Labor Act prescribes the method for making changes in agreements affecting rates of pay, rules, or working conditions.

It is our considered opinion that Award No. 1628 of this Division states the correct rule in this type of case and should have been followed.

Edward W. Wiesner

R. W. Blake

A. C. Bowen

T. E. Losey

George Wright