Award No. 2285

Docket No. 2250

2-B&O-EW'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 30, RAILWAY EMPLOYES' DEPARTMENT A. F. of L. (Electrical Workers)

THE BALTIMORE AND OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the Carrier violated the current agreement by assigning others than Electrical Workers to perform Electrical Workers work on August 27, 1954.

2. That Electricians J. A. Balsley and W. D. Detwiler be compensated for eight hours pay at the rate of time and one-half for work which they should have been called upon to perform on the aforesaid date.

EMPLOYES' STATEMENT OF FACTS: At Hoslopple, Pennsylvania, August 27, 1954, Signalmen Helpers Charles E. Ringer and Smith Hart installed 115 volt service cable from station building to relay box, a distance of approximately 50 feet for the express purpose of using said 115 volt service to supply crossing flashers equipment at road crossing. This cable was installed underground from a safety switch located on the outside of the building. This safety switch was installed by employes of the electrical department on September 1, 1954.

Submitted herewith as Exhibit A, is copy of memorandum of conference held at Pittsburgh, Pennsylvania on November 1, 1954 which clearly shows this work in the past has been performed by electricians and further shows the carrier officials understood it was covered by the electrical workers' rules.

This dispute has been handled with the carrier up to and including the highest officer so designated by the company with the result that he has declined to adjust it.

The agreement effective September 1st, 1926, and as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is the contention of the employes that the carrier, by permitting the employes of the signal department to install this 115 volt service cable from station building to the relay box violated the electrical workers' Classification Rules Nos. 125 and 126, which reads as follows:

filed in writing within 60 days after the effective date of this rule in the manner provided for in paragraph (a) of Section 1 hereof, and shall be handled in accordance with the requirements of said paragraphs (a), (b) and (c) of Section 1 hereof. With respect to claims or grievances filed prior to the effective date of this rule the claims or grievances must be ruled on or appealed, as the case may be, within 60 days after the effective date of this rule and if not thereafter handled pursuant to paragraphs (b) and (c) of Section 1 of this rule the claims or grievances shall be barred or allowed as presented, as the case may be, except that in the case of all claims or grievances on which the highest designated officer of the Carrier has ruled prior to the effective date of this rule, a period of 12 months will be allowed after the effective date of this rule for an appeal to be taken to the appropriate board of adjustment as provided in paragraph (c) of Section 1 hereof before the claim or grievance is barred."

The rule makes mandatory a period of 12 months "for an appeal to be taken to the appropriate board of adjustment", i.e., 12 months from January 1, 1955. Plainly, a declaration of intention to file (in this case dated December 29, 1955) does not constitute "an appeal to be taken to the appropriate board of adjustment." There is no evidence that an appeal, as contemplated by the rule, i.e., a full and complete statement of facts, was made in this claim. For this reason, the carrier suggests that the mandatory terms of the rule may not have been met. If this proves to be the case, then this claim is patently outlawed.

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.

Claimants are members of the electricians' craft employed by the Carrier and performed the work complained of at Holsopple, Pennsylvania. On August 27, 1954, Carrier used two signalmen helpers to install a 115 volt service cable from the station building to a relay box for the purpose of supplying electrical energy to crossing flasher equipment at a highway crossing. The cable was 50 feet in length and was installed underground from a safety switch located on the outside of the station building. It is the contention of the organization that the work belonged to the electrical workers and that the agreement was violated when it was assigned to signalmen helpers. Claimants demand compensation for the work improperly denied to them.

It is contended first that the Board is without jurisdiction to hear and determine the dispute on its merits for the reason that the appeal was not lodged with the Board within the time limits prescribed by Article V (2) of the August 21, 1954 agreement. The agreement became effective generally on January 1, 1955. The organization filed its declaration of intention to file its claim with the Board on December 29, 1955, a date within 12 months after the effective date of the rule providing for an appeal to the Board in this type of dispute. The Carrier contends that the rule requires the filing of claimant's submission in order to come within its terms. The Carrier is in error on this contention. The filing of the declaration of intention to file the appeal with the proper Division lodges jurisdiction of the dispute with the Board. From that time on the progressing of the dispute is subject to the rules of the Board. The Board may properly extend the time in which the submissions of the parties may be filed, a power inconsistent with a lack of jurisdiction. We conclude, therefore, that the filing of a notice of an inten-

tion to file an appeal with the proper Division of the Board has the effect of lodging the dispute with the Board and subjects such claim to the procedural rules of the Division from that time on.

Carrier also asserts that the signalmen are involved within the meaning of the Railway Labor Act and that the signalmen's organization should have been given formal notice of the hearing before the Board. This issue has been a source of contention before the Board for several years. It will serve no useful purpose to discuss the matter in detail. We shall content ourselves with a statement of our conclusions in the matter.

The Adjustment Board is a Board of limited and defined powers. Its purpose is to interpret agreements between the Carriers and the various crafts. It has no broad or equitable powers; it is limited by the statute of its creation. In the interpretation of a collective agreement, the Carriers and employes "involved" refer to those under the collective agreement before the Board for interpretation. We point out that Section 3(b) provides that the Board shall be composed of four divisions "whose proceedings shall be independent of one another." The present claim is by the Electricians' Organization, an organization the interpretation of whose agreements is within the jurisdiction of the Second Division. The Signalmen's agreement is within the jurisdiction of the Third Division to interpret. Since the proceedings of the Divisions must be independent, the one may not encroach upon the jurisdiction of another. The contention that the rights of other organizations must be considered in determining the meaning of a collective agreement with a particular organization is foreign to the purposes and intentions of the Railway Labor Act. The only purpose of notice to other organizations, as we see it, would be to relieve against duplicated liability provisions in separate contracts or to adjust jurisdictional disputes, both of which are not within the authority of this Board. But it is asserted that without notice, due process of law is not afforded. We submit that third party organizations lose nothing under their agreements if only the agreement of the primary complaining organization is involved. But assuming that there is a question of due process involved, without affording due process of law, the statute (Railway Labor Act) could well be subject to constitutional prohibitions. But due process need not be afforded at any particular stage of the proceedings. It is completely afforded by Section 6 where the matters complained of, alleged to require third party notices, can be adequately handled. Contract provisions may be cancelled and new ones negotiated. Jurisdictional disputes can be settled. It is urged, particularly in some court decisions, that to require employes of one craft to give up jobs to another craft affords the basis of a want of due process. We do not so construe the act. This Board may find that a collective agreement has been violated and grant reparations, but it lacks the authority to order certain employes to be assigned to specific work. That is the province of the Carrier. Consequently, a Carrier could properly refuse to use employes in accordance with the interpretations contained in an award and serve a Section 6 notice to protect itself against double liability and jurisdictional disputes. In this manner, due process is afforded. We submit that either party is required to follow the method of attaining due process as provided by the act and may not, because it prefers some other method of attaining it, depart from the plain language of the act. On this basis we find that the claim of the Carrier that formal notice must be given to the Signalmen's Organization in order to afford due process to all parties "involved" is without merit.

The question before the Division is, therefore, whether the work of laying the 115 volt service cable from the station building to the relay box for the purpose of supplying electrical energy to flashing equipment at a highway crossing belongs to the electrical workers or the signalmen. The electrical energy involved in the present case was supplied to the Signal Department from an outside source. A determination of the point of delivery necessarily determines the issue. Electrical workers performed all installation work to the switch located outside the station building. In a letter by Carrier's electrical engineer bearing date of March 8, 1950, it is stated that the delivery of electrical energy to Signal Department central points of distribution is the

function of the Electrical Department, and has been its function for more than 30 years. In two similar cases shown by the record when the precise question was the subject of dispute, the Carrier conceded the position of the electrical workers to be correct and paid claims similar to the present one. We necessarily conclude that the point of delivery under the rules as interpreted by the parties on this railroad is the relay box and not the safety switch installed on the station building. The work in question therefore belonged to the electrical workers and a sustaining award is required.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1956.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the interpretation was rendered.

INTERPRETATION NO. 1 TO AWARD NO. 2285
DOCKET NO. 2250

NAME OF ORGANIZATION: System Federation No. 30, Railway Employes' Department, A. F. of L. (Electrical Workers)

NAME OF CARRIER: The Baltimore & Ohio Railroad Company.

QUESTION FOR INTERPRETATION: The Carrier maintains that the claimants in Award 2285 are entitled to be compensated at the pro rata rate only, and that had it been so stipulated in the award, the claim as made at part (2) would have so stated. Plainly, such a holding would be consonant with the almost uniform holdings before the several non-operating Divisions as well as with the bases of settlements reached between the same parties on the property.

Upon application of the carrier involved in the above Award, that this Division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

In the claim as made, the employes in paragraph 2 of the claim demanded that the claimants "be compensated for eight hours pay at the rate of time and one-half." The carrier raised the issue as to the rate of pay by asserting "the Carrier submits that the claim as made at the punitive rate is basically defective; the most the claimants can assert by way of damages is claim at the pro rata or straight time rate of pay." The Award, without any mention of the proper rate to be applied, disposed of the matter by stating generally "Claim sustained." The correct rule is: Time for work lost is the pro rata rate of the position. Awards 2238, 2273, 2276.

We point out that there is no discussion of the applicable rate of pay in the Award. The issue not having been discussed and no reason having been given why the general rule applicable to such cases should not apply, the Award should be construed to apply the general rule. In other words the Award should be construed as providing for the payment of the pro rata or straight time rate of the position.

Referee Edward F. Carter who sat with the Division as a member, when Award No. 2285 was adopted also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of December, 1956.