Award No. 2642
Docket No. 2401
2-SOU-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement the Carrier improperly established a seven (7) day operation on repair track, car department, Memphis, Tennessee, and Carmen G. C. Goins, C. King, M. Bailey, A. L. Johnson, E. L. Bryant, G. D. Stokes, R. L. Fossee, J. L. Weatherby, Ben Murner, James Q. Murner and Carman Helper Elois Wood were improperly assigned to a work week, with rest days other than Saturday and Sunday or Sunday and Monday.

2. That the Carrier be ordered to:

(a) Assign these employes to a proper work week, Monday through Friday, with rest days Saturday and Sunday, or Tuesday through Saturday, with rest days Sunday and Monday.

(b) Make these employes whole by compensating them additionally at the applicable overtime rates instead of straight time for service which they were assigned to perform on each of their proper rest days retroactive to and including December 5, 1954, and compensate them additionally in the amount of eight (8) hours at applicable pro rata rates for each day they were improperly assigned to rest retroactive to and including December 5, 1954.

EMPLOYES' STATEMENT OF FACTS: At Memphis, Tennessee, the carrier operates a repair track whereat they employ carmen and carmen helpers. Prior to December 5, 1954, carmen and carmen helpers were not assigned to work on Sundays. Under date of November 30, 1954, Master Mechanic M. W. Sheehan posted a bulletin advising that the repair track would

but more important is that such shipments are usually consigned to meet a certain market and if late in arriving and loss results therefrom, carrier would be liable; and the fact that it helps to alleviate any car shortage or to prevent one from coming into being." (Emphasis added.)

Here, again, was a situation which is similar in many respects to that involved in the present case. It was necessary for the carrier to make repairs to cars on Sunday in order to avoid holding those cars in its yards over the week-end. The Board held that prevention of delay to cars, more satisfactory service to shippers, avoidance of possible damage to the contents of the cars, and alleviation of a car shortage constitute "necessity" within the meaning of the rule in the forty hour week agreement.

The situation at Memphis is similar to those involved in the above claims, all of which have been denied for the simple reason they were not supported by the agreement. The instant claim should be denied for the same reason.

Claim being barred and not having been handled as required by agreement rules, the Railway Labor Act, and Board Rules of Procedure, the Board should dismiss it for want of jurisdiction. However, if for some unforeseen reason, the Board should assume jurisdiction, it cannot do other than make a denial award.

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.

Complaint is made that carrier improperly established a seven (7) day operation on repair track, car department, Memphis, Tennessee. Carrier points out a procedural defect which we deem of sufficient importance to consider in the interest of placing the primary burden of resolving disputes where it belongs—upon the parties.

It is undisputed that the earlier steps in processing the written grievances were taken. It is of importance to note that these steps were evidenced by a series of letters between the parties as contemplated by the Shop Crafts' Agreement. However, while the rules and statute contemplate final appeal upon the property to the highest officer designated by the carrier to handle such disputes, here, the Assistant Director of Labor Relations, proper proof is lacking of compliance with such required step. The alleged omission is put in issue by the carrier in its initial submission.

The organization in its rebuttal submission meets this issue by attaching three (3) letter exhibits signed by general chairmen who presumably were in attendance when final discussions allegedly took place. These letters simply state that reference has been made to the particular writer's diary and brief note was therein contained of the fact of conference respecting the instant

dispute. The carrier responded to such assertions by setting forth what purports to be its representative's verbatim note to the effect mention was not made in conference of the within subject.

It seems unusual that in a dispute of this magnitude written evidence of appeal and disposition are lacking as is the case in connection with the earlier steps. The least that could be expected would be the submission of photo copies of the alleged diary notes. Without such we are left with bare assertions that brief discussion took place, at most, with a perfunctory effort to discharge an important responsibility. We do not feel compelled to entertain jurisdiction upon such scanty showing of efforts to settle a dispute. The burden being upon the organization to seek out such proper conference, we must dismiss the claims for failure to assume such burden.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October, 1957.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2642

Apparently the only justification for refusing to entertain jurisdiction is what the majority terms the organization's failure to assume the burden of seeking out a final conference with the highest officer designated by the carrier to handle disputes. The majority bases its determination that a final conference was not held upon an asserted notation made by the carrier's highest designated official to the effect that this case was not mentioned during conferences on August 22 and 23, 1955. They prefer to consider this assertion as carrying more weight than letters from three general chairmen testifying to the fact that the dispute was a subject of the conference on August 22.

If there is any question as to the requisite final conference having been held the burden of proof rests equally on the statutory representatives of both parties and credence should not be given to the mere assertion of the other party's representative. It is our considered opinion that the Second Division should assume jurisdiction for the purpose of determining this case on its merits.

R. W. Blake

C. E. Goodlin

T. E. Losey

Edward W. Wiesner

James B. Zink