Award No. 2664
Docket No. 2509
2-CGW-FT-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

CHICAGO GREAT WESTERN RAILWAY COMPANY

SYSTEM FEDERATION NO. 73, RAILWAY EMPLOYES' DEPARTMENT, AFL (Federated Trades)

DISPUTE: CLAIM OF CARRIERS:

(1) Claim that the Carrier has violated Rule 24 of the Shop Crafts' Agreement, effective February 1, 1924 (Reprinted June 1, 1954) by requiring other than mechanics to do mechanics' work.

CARRIER'S STATEMENT OF FACTS: Above claim was included in Strike Docket and Ballot dated January 30, 1956, which was actually submitted to the employes April 5, 1956. Parties were unable to compose their differences in conference during period July 9 to 12, inclusive, 1956, and carrier was notified on July 13, 1956, that the labor organizations parties to this claim had "set a strike date for seven A.M. Central Standard Time, July 18, 1956", at which time employes represented by the organizations would cease work for the carrier.

Rule 24 of agreement (hereinafter referred to as Shop Crafts' Agreement) effective February 1, 1924 (Reprinted June 1, 1954) between the Chicago Great Western Railway Company and employes represented by organizations composing System Federation No. 73, reads as follows:

"(a) None but mechanics or apprentices regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.

"(b) This rule does not prohibit foremen in the exercise of their duties to perform work.

"(c) At outlying points (to be mutually agreed upon) where there is not sufficient work to justify employing a mechanic of each craft, the mechanic or mechanics employed at such points will, so far as capable, perform the work of any craft that may be necessary."

POSITION OF CARRIER: As shown in carrier's statement of facts, the only claims, based on an alleged violation of Rule 24 of the shop crafts' agreement, appealed to highest officer designated by the carrier to handle such disputes are four claims dated January 7, 11, February 2 and September 13, 1955, progressed by general chairman of the International Association of Machinists. There is a dispute between the parties as to whether or not these four claims are barred by the terms of Article 5 of national agreement of August 21, 1954 (Exhibit A)—**sole purpose of this ex parte submission is to resolve that dispute.**

It will be noted from carrier's statement of facts that claims dated January 7, 11 and February 2, 1955, after being declined in writing by carrier's superintendent of motive power & equipment on March 2, 1955, were not appealed to carrier's personnel officer until November 10, 1955, or approximately 250 days after decision of carrier's superintendent of motive power & equipment. Under terms of Section 1 (b), Article 5 of the August 21, 1954 Agreement, the employes had a period of 60 days from March 2, 1955, or until May 1, 1955, in which to appeal claims dated January 7, 11 and February 2, 1955.

It will be further noted from carrier's statement of facts that claim dated September 13, 1955, was submitted to carrier's personnel officer in general chairman's letter of November 10, 1955. Under terms of Rule 27 (a) of shop crafts' agreement and Section 1 (a), Article 5 of the August 21, 1954 Agreement, claim dated September 13, 1955, should have been submitted in writing to claimant's "foreman, general foreman, master mechanic or shop superintendent, each in their respective order" instead of carrier's personnel officer.

Because of the employes having failed to comply with Rule 27 (a) of the shop crafts' agreement and Article 5 of the August 21, 1954 Agreement, it is the carrier's position that all four claims involved in this dispute are now barred by the terms of Article 5 of the August 21, 1954 Agreement, and are null and void. The Second Division, National Railroad Adjustment Board is, accordingly, requested to so find and deny claim.

Exhibit A is submitted herewith and made a part hereof as if fully set forth herein.

EMPLOYES' STATEMENT OF FACT: The carrier described cases are not ready for consideration and action by your Board. They are a group of unsettled disputes involving this carrier and System Federation No. 73, Railway Employes' Department, AFL-CIO, which have not been handled to conclusion on the property and the right of System Federation No. 73, Railway Employes' Department, AFL-CIO to endeavor to settle them by further negotiations or by means other than National Railway Adjustment Board pursuant to Article V, Section 5, of the agreement of August 21, 1954, has been challenged by the carrier in the courts.

It is, therefore, our position that until the courts have determined this matter and until these disputes have been handled as provided in Section 3, First (i) of the Railway Labor Act, as amended, they are not properly referable to your Board.

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 submitted this claim and in its submission states that a dispute exists as to whether the claim was barred by the terms of Article V of the Agreement of August 21, 1954 and that the sole purpose of the submission is to resolve that dispute. It is obvious that such submission does not conform to Circular No. 1, which provides that the Statement of Claim "must clearly state the particular question upon which an award is desired."

The original submission of the employes contended that the claim was not properly referable to this Division at that time. They never joined issue with the carrier upon whether the claim was barred by the time limit rule in the Agreement of August 21, 1954. In their rebuttal brief they seek a determination of the claim on its merits, contending that carrier waived the time limit rule by progressing the claim to this Division.

That contention cannot be sustained. Article V, Section 1 (b) of the Agreement of August 21, 1954 provides that if appeal in writing is not taken within sixty (60) days after disallowance "the matter shall be considered closed," and provides for extension of time only by agreement of the parties. If a claim is so closed it is not subject to further processing by either party without agreement by the other, so carrier's abortive submission, as to whether it was so closed, does not waive the provisions of that agreement.

Under the circumstances the claim must be dismissed for failure of the petitioner to comply with our Circular No. 1.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of November, 1957.