Award No. 2972
Docket No. 2445
2-MP-FT-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Harry Abrahams when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Federated Trades)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreement Rules 52, 88 and 117 the rebuilding and repairing of station trucks operated by the Carrier is Shop Crafts Employes' work.

2. That the Carrier violated provisions of the controlling agreement when on or about January 15, 1955, Bridge and Building employes at Compton Avenue, St. Louis, Missouri, and Bridge and Building Employes at State Line Freight House, Kansas City, Missouri, were assigned to rebuild and repair station trucks.

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 issue involved herein is whether rebuilding and repairing of Station Trucks operated by the Carrier is Shop Craft Employes' work. The work in this instance had been assigned to the Bridge and Building Employes.

The request by the Carrier that notice be given to the Bridge and Building Employes under Section 3 First (j) of the Railway Labor Act was not set out in the record in so many words but was brought up by the Carrier

Members of this Division during the oral argument with the Referee present. Notice had not been given to the Bridge and Building Employes under the Railway Labor Act. It was apparent from reading the employes' statement of claim, as set out in the record, that the claim of the employes was that the rebuilding and repairing of Station Trucks was Shop Craft Employes' work, and that the said work had, on or about January 15, 1955, been assigned to the Bridge and Building Employes.

The request made by the Carrier during its oral argument that due notice of the hearings be given to the Bridge and Building Employes was not a matter that would come as a surprise from a reading of the record. It was apparent from the record that the Bridge and Building Employes were involved in this dispute. The fact that those involved in the dispute are entitled to notice under Section 3 First (j) of the Railway Labor Act can be brought up at any time by the Carrier Members of the Board during the hearings.

The Court in the case of Kirby vs. Pennsylvania Railroad Co., 188 F. 2d 793 at Page 799 said:

> "* * * The Board's authority to act is based upon the statute. Until the statutory requirements are met, it has no more standing to produce legally effective orders than any voluntary group of citizens. Anyone to be affected by the purported order can raise the point that it has no legal foundation. We conclude that defendant carrier may raise the point that employees involved in the dispute had no notice or knowledge of the hearing, and no opportunity to be heard before the Adjustment Board. A party is entitled to an award that will protect it in the event that it complies."

The Court in the case of Hunter vs. Atchison, Topeka & Santa Fe Railway Co., 188 F 2d, 294 at Page 300 said:

> "It is not necessary for an employee to be named as a party to the proceeding before the Board to be involved in the controversy within the meaning of the law."

This Board holds that notice of the dispute must first be given under the Railway Labor Act to the Bridge and Building Employes as they are involved in this dispute prior to an award being entered on the merits.

The subject of third party notice was discussed in our Award No. 2970. Accordingly, notice as set out in Section 3 First (j) of the said Act should be given to the Bridge and Building Employes.

AWARD

Consideration of and decision on the merits herein is deferred pending due notice by this Division to the Bridge and Building Employes to appear and be represented in this dispute in accordance with Section 3 First (j) of the Railway Labor Act.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.

LABOR MEMBERS' DISSENT TO AWARD 2972

The majority's refusal to decide this case on the merits renders the Division vulnerable to the stalemating of any case simply on the suggestion of a carrier that a third party is involved. The erroneousness of the majority's holding that consideration and decision on the merits should be deferred pending due notice by the Division to the Bridge and Building Employes is readily apparent since the statutory jurisdiction of the Second Division does not include such employes nor does the governing agreement include said employes.

The majority should have adherred to the rulings of Second Division Awards 340, 1359, 1628, 2315, 2316, 2359 and 2372 and awards of other Divisions, such as Award 8079 of the Third Division, that notice to third parties is not required where the employes' rights, if any, are not controlled by the agreement of the claimant organization or where the employes are members of a craft whose disputes are referrable to other Divisions of the Board and over which the Second Division would have no jurisdiction.

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner

/s/ J. B. Zink