Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8080
SECOND DIVISION Docket No. 7722
2-MP-EW-'79

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

Parties to Dispute: (System Federation No. 2, Railway Employes' Department, A. F. of L. - C. I. O. (Electrical Workers)
(Missouri Pacific Railroad Company

Dispute: Claim of Employes:

1. That the Missouri Pacific Railroad Company violated the controlling agreement of June 1, 1960 at North Little Rock, Arkansas when they denied Electrician J. A. McAllister the work of his assignment, 3E Motor Winding, as bulletined.

2. That, further, the Missouri Pacific Railroad Company violated Rule 31(a) of the June 1, 1960 controlling agreement when they failed to respond to the claim filed within the 60 day period and failed to allow the claim as presented.

3. That, accordingly, the Missouri Pacific Railroad Company be ordered to allow the claim as presented and, further, compensate Electrician McAllister eight hours (8') at the pro rata rate each day Monday through Friday, commencing February 16, 1976 and to continue as long as Electrician McAllister is denied the right to the duties of the job he should have assumed on December 16, 1975, in line with his seniority.

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.

Parties to said dispute waived right of appearance at hearing thereon.

At the outset of our discussion on this case, we feel it necessary to remark to both parties that their on the property handling of this dispute leaves much to be desired. For the union's part, they failed to state, during the handling of their claim on the property, any rule (other than the time limit rule) which they felt supported their claim before management, and also, after initially presenting what the union termed a grievance (in a letter dated February 10, 1976), subsequently amended this pure grievance on

April 15, 1976 to include a request for compensation for named Claimants. On the Carrier's part, they failed to respond in writing to the union's letter of February 10, 1976 (although they did hold a meeting shortly after receipt of the letter to discuss the matter). So, as the case unfolds, it takes no imagination to project the claims and counter claims both sides have lodged against one another. Such conduct is hardly a model for employer-employee relations.

The genesis of the dispute, as we see it, occurred on December 16, 1975 when Carrier took certain action rearranging the job assignments of shop electricians at North Little Rock, Arkansas. The union said nothing about this until February 10, 1976, when they wrote to Terminal Master Mechanic Daniels in a letter which, in summary, asked that "... you require Electrician Foreman B. J. Qualls to assign these men according to their job titles and seniority".

Carrier held a meeting on March 4, 1976 with the local committee, and, according to Carrier's version of what transpired at that meeting, all the issues were settled. This position was maintained during the handling of the dispute through the highest officer, and the union submitted no evidence during on the property handling countering Carrier's position. The union, however, does not agree with this position, and the local chairman states that he walked out of the meeting abruptly, prior to any resolution of the matter, and that the other two committeemen had no right to reach a conclusion with the management on the issues since he, the local chairman, was not present. There are assertions and counter-assertions regarding the conduct of both parties at this meeting, but, suffice it to say that things never get settled in the spirit and intent of the Railway Labor Act when representatives lose their temper and walk away from problems. The Act requires that men of good faith negotiate in good faith to resolve their differences.

Carrier, apparently believing the matter was settled, did not confirm the conference in writing and thus left the letter of February 10, 1976 unanswered. Such a path was presumptious on Carrier's part, for, as we have held in many previous awards, Carrier is obligated to respond to all letters which have the character of a claim or grievance within sixty (60) days. The fact that management agreed to meet with the union on this matter recognizes, at least tacitly, that management knew it was dealing with a grievance-related matter. Thus, we find Carrier violated the contract when they failed to answer the February 10, 1976 letter in writing as the contract requires.

But, the union was equally guilty of mishandling under the agreement. Clearly, they could not amend their original grievance of February 10, 1976 on April 15, 1976 (more than sixty days from the initial presentation and genesis of the claim) to request compensation. Management is correct in asserting such action is improper, and consequently, we find the monetary claim improperly before us.

We are faced with an unusual situation. On the one hand, we have a grievance (which must be allowed as presented under the agreement) requiring that certain electricians be assigned to jobs in accordance with job titles and seniority. Management contends, and it was not rebutted successfully by the employes on the property, that such a request has been granted. On the other hand, the union has cited no rules, during the handling on the property, for us to evaluate (aside from the time limit rule), upon which to base an alleged contract breach.

In light of the foregoing, we are going to remand this case to the parties and admonish them to again sit down in good faith and work out a solution to this problem, bearing in mind the foregoing conclusions. If, by now, the issues involved in this dispute are moot (that is, conditions have been changed or corrected over the period during which this dispute has remained open), then certainly we cannot expect or require the parties to turn back time over three years to rekindle the situation which provoked the dispute. Any disputes about assignments subsequent to the events on December 16, 1975 would be new and different disputes which would have required proper handling under the agreement and the Railway Labor Act. In all probability, we must conclude that the issues here are now moot, and we again remind the parties that proper handling of such matters could have alleviated the situation we are here confronted with.

A W A R D

Claim sustained as set forth in the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of September, 1979.