

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

Parties to Dispute: { System Federation No. 16, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Carmen)
 { Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling Agreement and Article I of Memorandum of Agreement dated October 5, 1965 when it failed to call Carmen J. Samol and E. G. Wojtasiewicz to rerail three (3) freight cars in Bison Yard, Buffalo, New York on November 18, 1976.
2. That the Norfolk and Western Railway Company be ordered to compensate Carmen J. Samol and E. G. Wojtasiewicz two and two-thirds (2 2/3) hours at the time and one-half rate applicable to Carmen for November 18, 1976.

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.

This is a time claim based upon the alleged failure of Carrier to call claimants, members of the Carmen Organization, to rerail three freight cars in the Bison Yard, Buffalo, N.Y., on November 18, 1976. The Bison Yard is a coordinated facility maintained by Carrier in conjunction with the Consolidated Rail Corporation.

A Memorandum of Agreement dated October 5, 1965 governs the operation of the coordinated facility on this property, pursuant to an Order of the Interstate Commerce Commission in Finance Docket No. 21820, insofar as it affects employees represented herein. The Interstate Commerce Commission imposed designated protective conditions for the protection of employees who would be affected by the coordination of the Bison Yard facilities, which protective conditions rest fundamentally on those prescribed in the Washington Agreement of May 21, 1936. The Washington Agreement (Section 13) establishes procedures for handling disputes dealing with the subject matter found therein.

Carrier raises as a threshold question the jurisdiction of this Board over the instant dispute, arguing that disputes arising under the 1965 Memorandum of Agreement are subject to the arbitration clause (Section 13) contained in the Washington Agreement.

The United States District Court in Chicago and North Western Railway vs. Brotherhood L. E., 202 F. Supp. 277 (S.D. Iowa 1962), aff'd. 213 F 2d 424 (8th Cir. 1963) cert. denied 375 U.S. 819 in a similar situation held, in essence, that the Agreement entered into by the parties and approved before the ICC was valid and binding and that under similar circumstances as those herein, the parties were "relieved from the requirements of the Railway Labor Act by virtue of Section 5 (11) of the Interstate Commerce Act ..."

In the Chicago and North Western Railway case, the parties had entered into a stipulation for grievance handling which were was designed to protect the parties by a mutually agreeable alternative method permissible under the law. In that the Courts have already determined that this method of handling grievances does not do violence to the Railway Labor Act, we must also conclude that the proper forum for the instant dispute would be the special arbitration procedures outlined in lieu of Section 13 of the Washington Agreement of May 21, 1936, as it is of a character contemplated by Section 5 (2) of the Interstate Commerce Act.

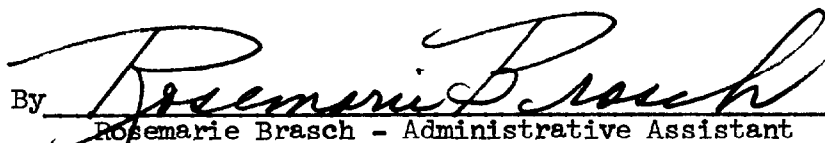
Inasmuch as the parties have provided for disposition of claims such as herein presented, we must respect their Agreement. (Awards 14471, 13767, 12717, 9388 and 16037). Accordingly this claim is dismissed.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 26th day of March, 1980.