

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP
CLERKS, FREIGHT HANDLERS, EXPRESS AND
STATION EMPLOYES

CHICAGO, SOUTH SHORE AND SOUTH BEND
RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim of the System Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that failure and refusal of the Carrier to issue Seniority Roster and furnish copy of same to 'employes' representatives', is in violation of the Rules of the Clerks' Agreement, and claim that said seniority roster be now issued and copy furnished in accordance with Rule 3-C of the Clerks' Agreement."

EMPLOYES' RE-SUBMISSION OF UNADJUSTED PORTION OF
DISPUTE TO THE THIRD DIVISION, NATIONAL RAILROAD
ADJUSTMENT BOARD.

"(1) Under date of September 30th, 1937, this Third Division, National Railroad Adjustment Board, rendered its Award 505 as a result of its consideration of an unadjusted dispute between the above named parties which had theretofore been submitted to said Division and designated by it as its Docket CL-492. Printed copies of said Award 505 are attached hereto and by reference made a part hereof.

"(2) As a result of and in conformity with the provisions of Award 505, Docket CL-492, the two parties have conducted mutual negotiations and have further established by tentative agreement those positions in the General Offices of the Carrier, which are to be classified as excepted from the scope of this agreement.

"There is appended hereto and made a part hereof a copy of General Chairman, Mr. L. C. Bennett's letter dated August 15th, addressed to General Manager Chas. H. Jones, and a copy of General Manager, Mr. Chas. H. Jones' letter dated September 2nd, addressed to General Chairman, Mr. L. C. Bennett.

"The attention of the Board is directed to the second paragraph of General Chairman, Mr. Bennett's letter in which stipulation is made, confirming the fact that as a result of conferences the two parties 'are in agreement on which of the positions in the General Office and Traffic Department should be considered as excepted positions and which ones should come under the scope of the agreement,' and that portion of General Manager, Mr. Jones' letter in which the statement is made 'Your letter generally covers the conferences which we had on this subject with the exception of the third paragraph in your letter. * * *'

and negotiations you ever agreed upon any thing and, if so, what that agreement was, and how it should be applied, and as to whether or not the Brotherhood represented the employees in question when such conferences and negotiations were held.'

Yet the latter is precisely that which the Brotherhood, by the very terms of its so-called resubmission, now seeks to do. In legal effect, such action is not a resubmission and the Carrier again moves to strike the so-called resubmission from the files of this cause.

"4. To grant the relief now sought would force the Carrier, if it is subject thereto, to violate the Railway Labor Act in order to secure some objective of the Brotherhood in which neither this Board nor the Carrier can be either concerned or interested. In support of this allegation there is annexed hereto, marked 'Exhibit A' and made a part hereof, a copy of the letter received by the Carrier from Mr. Edw. B. Lewis, dated January 17, 1938, the original of which the Carrier is ready and willing to produce, expressly notifying the Carrier that the Brotherhood which is now seeking relief in respect to those employees of the Carrier represented by Mr. Edw. B. Lewis, do not represent them. Whatever may be the right of the Carrier, upon its own initiative, to refuse to confer and negotiate with the representatives of any group of its employees upon the ground that such representatives are not, in fact, the representatives of such group of employees, the Carrier, if it is subject to the Act, certainly has both the right and the duty, under and in conformity with the Act in question, to refuse to either confer or negotiate with the alleged representatives of any group of its employees when the Carrier is expressly notified by those very employees, or some representative of them, that those persons purporting to confer and negotiate with the Carrier do not represent the employees in question. Consequently, not only is it clear that the so-called resubmission is neither in fact nor law a resubmission and that the dispute here, as well as the dispute upon which Award No. 505 is based, cannot be lawfully settled, if the Carrier is subject to the Act, unless and until the services of the Mediation Board have been invoked by persons other than the Carrier, for the Carrier is powerless in the premises, to decide as to whether the Brotherhood or some one else is or is not the proper and legal representative of the employees in question. There is attached hereto, and made a part hereof, a brief in support hereof.

"5. With respect to item (4) of the Brotherhood's so-called resubmission charging that the Carrier continues to fail and refuse to issue and publish copies of seniority rosters covering General Office employees and thereby continues the violation of provisions of Rule 3 (c) of the agreement of June 11, 1934, as alleged and asserted to have been proven in the records of the Third Division in its docket CL-492, the Carrier hereby denies such charge.

"The fact is that Rule 3 (c) of the agreement of June 11, 1934, requires that the seniority rosters of all employees, showing names, position occupied, location, date of employment and seniority rights, will be posted in January and July of each year in agreed-upon places accessible to all employees affected, and a copy will be furnished to employees' representative.

"The Carrier has always, since the date of said agreement, namely; June 11, 1934, issued a seniority roster of all employees, excepting and excluding only those excepted and excluded by Rule 1 (d) and (e) of the agreement of June 11, 1934, and furnish a copy thereof to the employees' representative in strict compliance with the provisions of such agreement.

"WHEREFORE, the Carrier prays the entry of an order herein dismissing said resubmission and striking the same from the files and for the entry of a further order vacating Award No. 505 and dismissing the original complaint upon which said Award No. 505 is based, and for such other, further and additional relief as, in the premises, may be meet, just and proper."

OPINION OF BOARD: On September 30, 1937, this Division, in Award No. 505, held that it had jurisdiction over the dispute represented in Docket

CL-492. At the hearing on that case there was placed in evidence an agreement between the parties, bearing effective date of June 1, 1934, the scope of which is stipulated in Rule 1 thereof.

Award No. 505 remanded the case to the parties for conference and negotiation, on the basis of the Opinion and Findings therein.

In conformity with Award No. 505 the parties subsequently conducted negotiations on the question as to which positions in the General Offices are to be excepted from the current agreement. There is disagreement between the parties as to what was actually accomplished as a result of the conferences and negotiations provided for in the award. Petitioner claims that there was a definite understanding reached as to which of the positions in the General Offices and Traffic Department should be considered "excepted" positions and which ones should come within the scope of the current agreement. Carrier contends that no conclusive understanding was reached. The Carrier states that, during the negotiations, certain General Office employes served written notice on the Carrier that the Brotherhood did not represent them and protested further negotiations by the Carrier and the Brotherhood; whereupon the Carrier discontinued the negotiations.

The scope rule of the agreement of June 1, 1934, does not except, as a group General Office employes. Negotiations undertaken pursuant to Award No. 505 were proper and appropriate under the current agreement, and, even if a representation dispute actually exists, it does not vitiate that agreement. This Board does not, therefore, take cognizance of the alleged representation dispute in relation to this case.

This Board is concerned only in the dispute dealt with in its Award 505 and thereby remanded for further conference and negotiation between the parties, and it again remands the question for a resumption of the interrupted negotiations between the parties, who are empowered to dispose of it through those means. If agreement thereon cannot be reached, the dispute may be resubmitted to the Board by the parties or either of them for final determination.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the question as to which positions in the General Offices shall be designated as excepted is again remanded to the parties for prompt conference and negotiation thereon.

AWARD

Case remanded to parties for conference and negotiation on the basis of the Opinion and Findings in Award 505 and herein.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 1st day of February, 1939.