Award No. 2551

Docket No. CL-2400

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

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

THE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that:

1. The carrier violated the Clerks' Agreement in removing caboose supply stockkeepers' work from the scope and application thereof at Meadville, Pa. as hereinafter stipulated:

(a) When on November 16, 1936, a laborer was employed by the Transportation Department, placed on Maintenance of Way payroll and assigned to the duties regularly and ordinarily performed by caboose supply stockkeepers, i. e. checking on hand supply of coal, oil, stationery, lamp chimneys, lamp globes, wicks, pails of dope for repairing hot boxes, fusees, torpedoes, etc. in each caboose and replenishing all items prior to its next run, in accordance with standing instructions, and

(b) When on July 16, 1937, a second laborer was employed by the Transportation Department, placed on Maintenance of Way payroll and assigned to duties regularly and ordinarily performed by caboose supply stockkeepers so that thereafter this work was performed sixteen hours each day, and

(c) When on December 23, 1942, a third laborer employed by the Transportation Department and placed on the Maintenance of Way Department payroll was assigned to caboose supply stockkeepers' work so that thereafter the service was performed 24 hours of each day, with one man on each eight hour shift, and

2. That positions of caboose supply stockkeepers shall now be established by the Stores Department and be classified, rated, bulletined and assigned in accordance with agreement provisions.

3. That the successful applicants to first and second shift positions and all employes affected by this violation be reimbursed for wage loss resulting therefrom retroactive to September 13, 1940, and

4. That the successful applicant to the third shift and all other employes affected be reimbursed for monetary loss resulting from this violation retroactive to December 23, 1942.

6. Work performed by these laborers is not work belonging to any particular class of employes. At various locations on the railroad the work is performed by different classes of employes, dependent upon availability of the employes and volume of this class of work to be done. At some locations it is performed by employes incident to other duties of their regular assignment.

OPINION OF BOARD: Dockets CL-2374, CL-2379, CL-2400, CL-2425, MW-2367, CL-2526, CL-2527 and CL-2544 were initially deadlocked on the issue of giving notice to persons or organizations, other than parties to the disputes, whose interests may be affected by awards on the merits. The Carrier Members take the position that binding and conclusive awards can be rendered only after notice is given to all whose rights may be involved.

The question raised is not a new one to this Division. It has been exhaustively considered in at least five cases and adverted to in another. In two cases only has it been held that notice to other than parties to the dispute is a prerequisite to the rendition of a valid and binding award as between the parties. These are Awards Nos. 1193 and 1400. The first was a dispute involving seniority rights. Before hearing the dispute on the merits, the Board, sitting with a Referee, ordered notice to be given to the person whose seniority rights were challenged by the claim. In Award 1400 the claim was denied because parties whose rights would have been affected by its allowance had not been given notice. In the others—Awards Nos. 371, 844, 902 and 2253—decision on the merits was reached without notice to parties other than those to the dispute. In each of these cases, as in Awards Nos. 1193 and 1400, it was recognized that the dispute might involve rights of parties other than those of record. If there were such parties, the award, of course, would not be binding on them. But it was held that this did not affect the jurisdiction of the Board to entertain the dispute nor impair its power to render a binding and conclusive award as between the parties to it. This for the simple reason that neither the Statute (Section 3-j, The Railway Labor Act), nor the Rules of Procedure established by the Board require notice to parties other than those to the dispute.

Of course, the Carrier Members challenge this proposition. But it was so effectively maintained and established by analysis of the Statute in Awards Nos. 844, 902 and 2253 that it would seem no longer debatable. Indeed, as we read the Opinions in Awards Nos. 1193 and 1400, no attempt was made to refute the proposition that the Statute and Rules of Procedure set up by the Board require notice only to the parties to the dispute. In Award 1400 the Referee's remarks amounted to nothing more than advice to the Board with respect to Rules of Procedure. He undoubtedly acted within his power as referee when he joined the Carrier Members in denial of the claim. From the decision, however, it is very apparent that he was aware that, as referee, he could not trench upon the rule-making power vested in the Board. Section 3 (u), The Railway Labor Act.

In Award No. 1193, the Referee, in joining the Carrier Members in requiring notice to be given to a party other than those to the dispute, did trench upon the rule-making power of the Board. Not only that, he exceeded the power conferred upon referees by the Act, which is, "to sit with the Board as a member thereof and make an award."

However desirable a referee may think notice to parties, other than those to the dispute, would be, he cannot order it because the Statute and Rules of the Board do not require it. The limitation of the power of referees is epitomized in the memorandum of the referee attached to Award No. 902, reading:

> "Since, in my opinion, the Board has jurisdiction over the parties and power to make an award which will bind them, the question is not whether the Board may lawfully proceed to dispose of the case, but whether it ought to do so. While the rules of the Board provide for

notice only to the parties, the Board could, if it wished, provide for notice to other persons who might be affected by awards. But whether the Board should do so or not is a question beyond the province of a referee. The Amended Railway Labor Act provides (U. S. C. A. Title 45, Sec. 153, First) that the Board shall 'adopt such rules as it deems necessary to control proceedings before the respective divisions * * *,' while a referee's function is 'to sit with the division as a member thereof and make an award.' "

We conclude that it is necessary to give notice of hearing only to the parties to the dispute.

The gist of this claim is for the establishment of positions of "**caboose supply stockkeepers.**" So far as we are able to glean from this record there never have been such positions on this carrier. There was a time prior to 1930 when stockkeepers checked and replenished supplies in cabooses. This was done, however, from box cars used as storehouses for caboose supplies. In 1930 the use of box cars as storehouses was abandoned and from then until November 1936 caboose supplies were obtained by train crews from the car yard storehouse. This was the practice when the controlling agreement became effective September 1, 1936. At that time it certainly was not contemplated that there was any such position as "Caboose supply stockkeeper." For in the coverage of positions under Group 1 of the scope rule there is no such position listed. On the other hand there are listed: ". . . sectional storekeepers, leading stockkeepers, chief stockmen . . . ."

Certainly at the effective date of the agreement it could not have been successfully maintained that checking supplies and stocking cabooses was within the scope of the agreement. Nor does the fact that beginning in November 1936 the work was removed from the trainmen and transferred to other employes serve to bring it within the scope of the agreement. We are satisfied from this record that the work of checking and replenishing caboose supplies is work that may be incidental to the duties of various classes of employes. At any rate, it is not work incidental to the ordinary functions of the position of stockkeeper. That is manifest from the very form of the claim: "That positions of **caboose supply stockkeepers shall now be established.**"

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 no violation of the agreement has been established.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 27th day of April, 1944.