

Award No. 5316

Docket No. CLX-5204

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee.

PARTIES TO DISPUTE:

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

RAILWAY EXPRESS AGENCY, INCORPORATED

STATEMENT OF CLAIM: Claim of the District Committee of the Brotherhood that

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees effective October 1, 1940 was violated at the Paterson, N. J. Agency through failure and refusal of management to allow Charles M. Downing his choice of representation at an alleged investigation conducted July 22, 1949 resulting in his suspension from service without pay for three days; and

(b) The investigation shall be declared a nullity, the record of Charles M. Downing cleared of the charge and that he be reimbursed for wage loss sustained covering the three day period of suspension August 1, 2 and 3, 1949.

EMPLOYEES' STATEMENT OF FACTS: Charles M. Downing is the regular occupant of a 6-day position at the Paterson, N. J. Agency titled driver, hours of assignment 9:20 A. M. to 6 P. M., Monday to Friday inclusive, 9:20 A. M. to 3 P. M., Saturday, Salary \$60.09 basic per week—day of rest Sunday—with a seniority date of May 26, 1921. During his period of employment he has occupied positions or performed clerical and/or platform duties—positions and work recognized as coming under the scope and operation of the agreement between the parties hereto.

July 20, 1949 General Agent E. A. Schmidlin wrote a letter to Downing reading:

"This to advise you that investigation will be conducted on Friday morning July 22 at 10 o'clock. This in connection with property damage at the Roth & Leiske, used car lot Fairlawn on July 18th, particulars concerning which you are familiar. Please arrange."

Copy of the letter referred to is hereto attached and made a part hereof identified as Employees' Exhibit A.

The alleged investigation was held at the time and date specified (10:00 A. M., July 22, 1949), with only the General Agent and employe—aside from the stenographer who took the record—being present. Downing was accompanied at the alleged investigation by Louis A. De Santis, Secretary of the

employees at Paterson. The case was docketed as A-3132 and Mediators were assigned to meet with the parties, and as set forth in Carrier's Statement of Facts the Clerks on March 10, 1950 voluntarily withdrew the case from the Board's consideration.

Their attempt here to secure a decision from the National Railroad Adjustment Board in the instant case is an endeavor to attain indirectly from this Board what they have been unsuccessful in obtaining from the services of the National Mediation Board, i.e., representation of this group of employees. As the Mediation Board did not change the representation of the vehicle employees at Paterson, N. J., as requested by the Clerks, the representation must remain with the Teamsters for if the action of the National Mediation Board is not reviewable in the Courts under the authority of the cases cited above, the National Railroad Adjustment Board certainly may not by award effect a change in representation in a case in which the National Mediation Board has exclusive and final jurisdiction.

The claim is without merit and should therefore be dismissed on the grounds: (a) that there has been no violation of the Clerks' Agreement, and (b) that the National Railroad Adjustment Board does not have jurisdiction of the subject matter of this controversy.

(Exhibits not reproduced.)

OPINION OF BOARD: By agreement of the parties hereto it was stipulated that part (b) of claim herein was not to be considered. Accordingly the Board will treat the claim as though said part did not exist and this Opinion, Findings, and Award shall in nowise affect it.

The sole and only issue here before the Board has reference to whether the Brotherhood selected the proper forum in which to present its claim. In order to determine such question we will briefly set down the facts giving rise to said claim as we find them to be.

On or about October 1, 1940, the Teamsters Brotherhood was the duly recognized bargaining agent of the employees at the location herein involved. On or about July 22, 1949, one Downing, an employee of Carrier, together with counsel of his choice appeared before Carrier's hearing officer charged with violation of an operating rule. The hearing officer advised the accused his counsel not being within the qualifications set out in the Teamsters' Schedule he was not competent to represent accused therein.

Subsequently Petitioner and Respondent exchanged correspondence with reference to who was the bargaining agent. Petitioner submitted sworn statements of at least a majority of the employees at the particular location to the effect that they were members of the Clerks' Brotherhood. Petitioner also attempted to secure recognition from the Teamsters. Failing in both attempts the Clerks invoked the services of the National Mediation Board with reference to Section 2 Ninth of the Railway Labor Act, as amended. The Mediation Board promptly responded to the call and made full and complete use of its good offices in an attempt to resolve the matter. However Petitioner in its wisdom on March 10, 1950, withdrew its request for the services of the Mediation Board whereupon the case was closed.

The gist of the claim herein is that Carrier by its acts hereinabove described violated Article 1 of the Clerks' Schedule. To this Carrier filed what amounts to a plea in abatement, i.e., under Section 2 Ninth and Section 3 First (i) of the Railway Labor Act, as amended, this Board does not possess jurisdiction to hear and decide the instant claim.

We agree with the objection urged by Carrier. The question of construing or interpreting the Schedule between the Clerks and Carrier is not involved. Why the Clerks requested dismissal of their request for the services of the National Mediation Board is of no concern to this Board. Why said Board when its services under Section 2 Ninth of the Railway Labor

Act, as amended, are requested apparently chooses to determine who will be the bargaining agent as between two vying Brotherhoods on a system-wide rather than a local basis is likewise no concern of this Board, see *Switchmen's Union of North America et al. vs. National Mediation Board et al.* 300 U. S. 297.

It follows inasmuch as the Clerks' Schedule is not involved there can be no interpretation of it.

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

The Board does not possess jurisdiction upon which to render an Award herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of April, 1951.