Award No. 6034

Docket No. CL-6047

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

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

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes that the Carrier violated the Employes' Wage Agreement dated March 1, 1951, effective February 1, 1951:

(a) That Carrier has not properly applied provisions of Agreement dated Chicago, March 1, 1951, by and between the participating Carriers, one of which was the Terminal Railroad Association of St. Louis, represented by its Conference Committee, and its employes, represented by the Brotherhood of Railway Clerks, etc., operating through the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organizations, By declining to place into effect the increase in rates of pay therein provided for to employes occupying positions tabulated in sub-paragraph B of Rule 1 of our General Rules Agreement with the Carrier, effective January 1, 1950;

(b) That Carrier now be required by an appropriate order from your Board to properly apply the provisions of this Agreement.

EMPLOYES' STATEMENT OF FACTS: On October 25, 1950, the Employes served formal notice on the Carrier in accordance with the provisions of Section 6 of the Railway Labor Act as amended, reading in part as follows:

"Please accept this as formal notice, served in accordance with the procedures of the Railway Labor Act on behalf of all employes we represent, of our desire to change and increase all existing rates of pay by the addition thereto of twenty-five (25) cents per hour, effective November 25, 1950, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour."

(2) that the agreements of April 4, 1946 and May 25, 1946 are entirely different than the agreement of March 1, 1951,

(3) that the Carrier corrected any error it may have been determined was made in its Powers of Attorney to the Committee executing the agreements of April 4, 1946 and May 25, 1946 when it issued Powers of Attorney to the Committees executing the agreements of March 19, 1949 and March 1, 1951, and

(4) that there is no provision in the basic agreement of January 1, 1950 governing the rates of pay, hours of service, overtime or other similar pay rules applicable to the so-called excepted clerical forces named in Rule 1.

All matters herein referred to in support of Carrier's position have been the subject of correspondence or discussions with Employes Committee. (Exhibits not reproduced).

OPINION OF BOARD: The issue here is the same as that determined by our Award No. 5905 which should normally control the decision herein. Due to the strenuous arguments advanced on behalf of the Carrier that such Award was erroneous we have re-examined the matter.

By our Awards Nos. 3916, 4060, 4087 and 4614 we determined that certain National Wage Agreements were applicable to the so-called excepted forces (those who are subject to some of the rules of schedule agreements but not to the rate of pay or hours of service rules). The employes covered by the Agreements for wage increases were determined on the basis of the authorizations attached to the Agreements which read:

> "Authority is co-extensive with scope of agreements except where otherwise noted."

In negotiating the 1947 Agreement to arbitrate the wage demands of Seventeen Co-operating Railway Labor Organizations the Western Carriers' Conference Committee proposed an authorization as follows:

> "Authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented by the organizations listed above, except that it does not apply to employes not covered by individual schedule agreements nor to employes excepted from the pay provisions of individual schedule agreements."

The Clerks' Organization refused to agree and advised their General Chairmen on the affected lines to notify the Carriers that unless such Carriers receded from that position they would be considered as refusing to bargain for all of the craft or class represented in violation of the Railway Labor Act and would be eliminated from the Arbitration proceedings.

Subsequently the Western Carriers' Conference Committee agreed to eliminate the exceptions stated in the proposed authorization and agreement was reached upon an authorization reading as follows:

> "Authorization is co-extensive with the provisions off current schedule agreements applicable to the employes represented by the organizations listed above."

It is the contention of the Carrier that such authorization has the same meaning as it did when the exceptions were tacked onto it in the original proposal, which, if true, would certainly be an ingenious way of attaining one's ends. However, if the language of an Agreement is clear and unambiguous the parties are bound by it even though one of them acted upon the assumption that it meant something else. If however, the

language is ambiguous then it must be construed most strongly against the one who proposed or wrote it.

The Carrier considers that the language of the authorization makes the wage increase agreed upon inapplicable to employes holding positions not subject to the rate of pay provisions of the schedule Agreement, whereas the Organization considers that it makes the wage increase applicable to all employes covered by any of the provisions of the schedule Agreement. It is easy to see how such different views arose. One views the language as a limitation of coverage by virtue of the inapplicability of the schedule rate of pay provisions to certain employes, while the other views it as extending coverage to all employes represented under the schedule provisions. It should be noted that bargaining upon rates of pay and for wage increases had previously been treated as two different things and, generally, had not been treated in the same Agreement. Considering also the fact that the Carriers originally proposed language clearly expressing the limitation which they now want implied but receded from their position upon objection by the Organization, one can hardly say that the Organizations interpretation of the authorization was wholly without foundation.

After the 1947 wage increase was determined by the arbitrator, all of the employes here involved were given an increase of at least that amount either in accordance with the Agreement and Award, as contended by the Organization, or as a comparable rate adjustment, as contended by the Carrier.

In the 1949 wage increase Agreement the same authorization was used and similarly all employes involved received a wage increase of at least the amount agreed upon.

Thus when the same authorization was incorporated into the 1951 wage increase Agreement there were substantial reasons for the Organization to believe that its view as to the meaning of the authorization was correct and that under it they were bargaining for a wage increase for all of their class or craft.

Careful consideration of all factors involved in the adoption of the authorization, the language thereof and the actions of the parties thereunder makes it impossible to say that it is entirely free from ambiguity. Consequently under the rules of construction stated above we are not disposed to overrule our Award No. 5905, but consider it controlling herein.

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 the 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 Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.

DISSENT TO AWARDS 6034 and 6035, DOCKETS CL-6047 and CL-6070

This case involved the simple question of whether certain clerical positions which were specifically excluded from the wage provisions of the contract between the Carrier and the Brotherhood shall be made the beneficiaries of a wage increase agreement by a construction of the authority given to the Carrier's agent to negotiate a wage increase for the craft. A logical consideration of the contract rights of the parties and the law would have been that because these positions are specifically excluded from the wage provisions of the working agreement, they cannot be injected into the wage negotiations between the Brotherhood and the agent of the Carrier when the latter was empowered only to deal in a manner "co-extensive with the provisions of current schedule agreements." That is true, irrespective of this Award, because the specific exceptions in the working agreement were not changed by the wage settlement agreement and the authority of the Carrier's agent was expressly limited to the terms of the working agreement.

This Award is predicated upon a revision of language authorizing the Western Carriers' Conference Committee, as agent, to enter into a proceeding in 1947. But that was an arbitration proceeding and as such was of an entirely different character from the 1951 negotiations. The fact that it is found a change was made by the Carrier's agent in the 1947 proceeding is not only assumed now to have broadened the agent's power then, but assumption is laid upon assumption and the revised language of the agent's authority in 1947 is construed as broadening his authority in an entirely different proceeding of a thoroughly dissimilar character some four years later.

In order to legally substantiate this Award, there must have been a finding that the principal enlarged the agent's authority to accommodate the positions in question. There is no such finding and there was no such fact. Therefore, the Award is wrong.

The case employs the rule of construction that ambiguous language must be construed most strongly against the one who wrote it, but the majority has overlooked the well settled principle of law that: "Under no circumstances should construction be used as a device to enlarge the authority beyond the powers expressly given." (2 C.J.S. 1220.) It is equally well settled as a matter of law that it is the act of the principal rather than the agent which is looked to in determining its legal nature. (1 Mechem on Agency, Section 285.) Here there is no finding whatever as to any act of the principal tending to broaden the power of his agent beyond the stated limitation.

The simple statement of the agent's authority which was made a part of the record of the 1951 proceeding, i.e., "Authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented by the organizations listed above" is not at all equivocal. It was base error for this Board to construe this clear language by a reference to some other language in an entirely different character of proceeding four years previously. The law has long been that where the power of authorization of an agent is in writing, parol evidence will not be admitted to vary the terms. (1 Mechem on Agency, Section 975.) Here parol evidence was not only admitted but was held to be the controlling evidenciary matter in the entire case.

Because of the foregoing reasons, we dissent.

/s/ E. T. HORSLEY
/s/ R. M. BUTLER
/s/ W. H. CASTLE
/s/ C. P. DUGAN
/s/ J. E. KEMP