

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Emmett Ferguson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD TRAINMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim for and in behalf of Steward R. C. Scavarda for March 17, 1952, and subsequent dates, and for and in behalf of other stewards similarly situated for March 17, 1952 and subsequent dates account use of Waiters-in-Charge on coffee shop-lounge cars operating on trains Nos. 131-120, 153-152, 177-176.

Claim made under agreement dated August 18, 1939 attached hereto and marked Exhibit "C" and Third Division Awards 3802 and 4721.

OPINION OF BOARD: Under our system of government, the rights of the individual are paramount. One of these rights, most basic, is guaranteed by the due process clause of the Constitution which has been construed to require notice and an opportunity to be heard. Another right guaranteed by statute is the right to organize for collective bargaining. So also is the right established by Section 3, First (j) of the Railway Labor Act requiring "notice of all hearings to the employe or employes involved," which implements these basic rights.

Considering these concepts in connection with the instant case, and considering the weight of authority, both in the Opinions of this Board and the cited decisions of the Federal Courts, we are of the opinion that, in a "third party" case, such as the one before us, Section 3, First (j) of the Railway Labor Act requires,

"* * * the several divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them."

The individual rights of other employes are necessarily "involved" in determining this present dispute, which has been brought by fellow employes who are claiming the work presently being done by such non-notified employes.

We are of the opinion that until such notice has been given to the other employes "involved" this Board should withhold further proceedings and that this Board should give the notice required by the Railway Labor Act and that the claim should be remanded to the parties for further handling on the property consistent with this Opinion before further progression under the Railway Labor Act.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That both parties to this dispute waived oral hearing thereon;

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;

That a dispute is presented concerning other employes involved within the meaning of Section 3, First (j) of the Railway Labor Act;

That such employes have not been notified of the pendency of the present dispute and should be given notice by this Board; and

That this claim should be remanded to the parties for further handling on the property, consistent with this Opinion.

AWARD

Remanded after the giving of notice for further handling in accordance with the foregoing Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 28th day of October, 1953.