Award No. 7085
Docket No. MW-7042

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood, that:

(1) The Carrier violated and continues to violate the Union Shop Agreement of January 12, 1953, when it failed and refuses to notify Crossing Watchmen J. O. Hampton and L. C. Epps that they were charged with non-compliance of the aforesaid Union Shop Agreement in compliance with notices dated June 3, 1953, addressed to and received by Superintendent C. C. Courtway on June 4, 1953, all in accordance with the provisions of Section 5 (a) of the Union Shop Agreement of January 12, 1953;

(2) The Carrier shall be required and ordered to comply with the requests outlined in the aforesaid notices dated June 3, 1953;

(3) In addition to other compensation received, Crossing Watchmen Charles E. Steele and John Burns each be allowed pay at their respective time and one-half rates for an equal proportionate share of the total man hours consumed by Messrs. J. O. Hampton and L. C. Epps in performing Crossing Watchmen's services on each day subsequent to December 9, 1953, in which Messrs. J. O. Hampton and/or L. C. Epps are permitted to perform such services in violation of the Union Shop Agreement of January 12, 1953.

EMPLOYES' STATEMENT OF FACTS: As of the effective date of the Union Shop Agreement, four crossing watchmen were employed at Poplar Bluff, Missouri, as follows:

1. J. O. Hampton
2. John Burns
3. Charles E. Steele
4. L. C. Epps

Each of the aforesaid employes is incapacitated to various degrees, the first named employe being an incapacitated switchman assigned to the first shift.

did not want and has no interest in the Union Shop Agreement should be required to pay money penalties in connection with determining this issue.

It is the position of the Carrier that Hampton and Epps have the firm right to work these crossing watchman positions unless or until it is proven they must be removed and the Union Shop Agreement itself holds the Carrier immune from liability until such proof is presented and an order for removal is rendered and executed. It is just not logical or reasonable that anyone can have a valid monetary claim prior to settlement of this issue. If such claims were valid, the only Carrier defense against such unjust expense would be to proceed, contrary to its convictions, against Hampton and Epps and in the event their dismissal was later held to be improper, then the **Organization** would be liable under Section 8 of the Union Shop Agreement for all damages involved.

The Carrier protests the effort of the Employes to require it, under threat of accumulating monetary claims, to proceed, in violation of good conscience against employes it is convinced are not subject to the Union Shop Agreement. There is absolutely no basis for these monetary claims under the Rules Agreement and the Carrier holds that during the process of determining whether or not an employe must be removed from service and effectuating his removal under the Union Shop Agreement all monetary claims are barred by the terms of that Agreement itself. It is the position of the Carrier that these claims should be dismissed as improper and invalid.

The Employes have even put in these monetary claims on a time and one-half basis. The Carrier, of course, protests in any eventuality the validity of any punitive damages in this case, w hich protest is fully substantiated by numerous Awards of your Board including, among others, Awards Nos. 2346, 3232, 4603, 4616, 4853, 4947, 5721, 6004, 6136 and 6444.

(Exhibits not reproduced.)

OPINION OF BOARD: In our Award No. 6744 we decided a similar dispute concerning the application of the Union Shop Agreement. We think the principles there enunciated are proper and govern the determination of this dispute.

That Agreement establishes a special procedure to resolve disputes thereunder concerning individual employes, which terminates in arbitration if necessary. We held that the Carrier could not arbitrarily refuse to give the notice to individual employes, which inaugurates such procedure, on the basis of its claim that the employes were not subject to the Union Shop Agreement. Thus we find that parts 1 and 2 of the claim should be sustained.

We also properly held that, in view of the special procedure agreed upon, we would not determine the merits of the controversy. To sustain or deny part 3 of the claim would require us to determine the dispute on its merits. That we decline to do, so it will be remanded to await such determination in the proper forum.

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

The Agreement was violated.

AWARD

Parts 1 and 2 of the claim are sustained.

Part 3 of the claim is remanded in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 29th day of July, 1955.