

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis B. Murphy, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ELGIN, JOLIET AND EASTERN RAILWAY 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 February 5, 1953, when it failed and refuse to notify Track Laborers P. McLaughlin (Account No. 65493) and W. Zbronski (Account No. 9571) that they were charged with non-compliance of the aforesaid Union Shop Agreement in compliance with notices dated March 8, 1955, addressed to and received by Mr. F. T. Brandt, Assistant Vice President (Personnel), all in accordance with the provisions of Section 5(a) of the Union Shop Agreement of February 5, 1953;

(2) The Carrier be required and ordered to comply with the requests outlined in the aforementioned notices dated March 8, 1955.

EMPLOYES' STATEMENT OF FACTS: Messrs. P. McLaughlin and W. Jbronski were employed as track laborers at South Chicago in excess of sixty calendar days as of March 8, 1955.

Both Mr. McLaughlin and W. Zbronski were subject to the terms and conditions of the Union Shop Agreement, dated February 5, 1953, between the parties hereto.

Inasmuch as Merrrs. McLaughlin and Zbronski refused to place themselves in compliance with the Union Shop Agreement, despite repeated urging to do so by authorized representatives of the Employes, the Carrier was appropriately notified in accordance with Section 5(a) of the Union Shop Agreement and requested to so notify each of the aforenamed employes as required by Section 5(a) thereof.

The above referred to notices, dated March 8, 1955, were received by the Carrier. Nonetheless, the Carrier refused to notify either Mr. Mc-

Messrs. McLaughlin and Zbronski until a notice has been received which satisfies the requirements of the Union Shop Agreement.

IV. CONCLUSION

The Carrier is confident that the Board will find that in this submission the Carrier has conclusively established the following points:

1. The Union Shop Agreement does not contain the requirement that employees pay dues and/or initiation fees.
2. The allegation that the Employees failed to pay the required dues and/or initiation fees to the Organization is not sufficient reason to claim that the Employees are in violation of the Union Shop Agreement.
3. An employee must be charged with an act or the omission of an act which is violative of the Union Shop Agreement before the Carrier is obliged to notify such employee in the manner required by Section 5(a) of the Union Shop Agreement.

In view of the foregoing the Carrier respectfully submits that a denial award should be made.

Material included herein has been discussed with the Organization either by correspondence or in conference.

(Exhibits not reproduced.)

OPINION OF BOARD: Mr. P. McLaughlin entered Carrier's service as a track laborer on September 28, 1953 and worked in this capacity until March 23, 1955, when he resigned. Mr. W. Zbronski entered Carrier's employ on December 16, 1954 as a track laborer and worked in such capacity until March 7, 1956 when he went on leave of absence due to a serious injury he suffered on that date.

Under date of March 8, 1955 the Organization notified the Carrier as follows:

"You are hereby advised that P. McLaughlin, Account No. 65493, employed as track labor in So. Chicago has failed to comply with the terms of the Union Shop Agreement of February 5, 1953, for the reason that he has failed to pay the required dues.

"It is therefore requested that such employee be so notified in accordance with the provisions of Section 5(a) of the February 5, 1953, Agreement."

"You are hereby advised that Mr. W. Zbronski, Account No. 9571, employed as track labor in So. Chicago has failed to comply with the terms of the Union Shop Agreement of February 5, 1953 for the reason that he has failed to pay the required initiation fee and dues.

"It is therefore requested that such employee be so notified in accordance with the provisions of Section 5(a) of the February 5, 1953, Agreement."

On March 14, 1955, Carrier notified the Organization that their request that Carrier serve these employes with a Section 5(a) notice was improper in that it failed to specify a *bona fide* reason for the sending of these notices.

On March 22, 1955 the Organization General Chairman charged that upon receipt of notice from them of an employe's non-compliance with the Union Shop Agreement, Carrier was obligated to send such employe a Section 5(a) notice without considering the relative merits of such notice.

In Carrier Member's brief he contends this claim must be dismissed because:

- 1) The Organization failed to comply with the mandatory time limit provisions of Article V of the August 21, 1954 National Agreement;
- 2) The Organization's claim which relates to Mr. P. McLaughlin is moot under Section 1 of the Union Shop Agreement; and
- 3) The serving of a Section 5(a) notice on Mr. Zbronski is barred by Section 3(a) of the Union Shop Agreement.

Section 5(a) of the Union Shop Agreement, effective September 15, 1952, reads as follows:

"(a) Each employe covered by the provisions of this agreement shall be considered by a carrier to have met the requirements of the agreement unless and until such carrier is advised to the contrary in writing by the organization. The organization will notify the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, of any employe who it is alleged has failed to comply with the terms of this agreement and who the organization therefore claims is not entitled to continue in employment subject to the Rules and Working Conditions Agreement. The form of notice to be used shall be agreed upon by the individual railroad and the organizations involved and the form shall make provision for specifying the reasons for the allegation of non-compliance. Upon receipt of such notice, the carrier will, within ten calendar days of such receipt, so notify the employe concerned in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. Copy of such notice to the employe shall be given the organization. An employe so notified who disputes the fact that he has failed to comply with the terms of this agreement, shall within a period of ten calendar days from the date of receipt of such notice, request the carrier in writing by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt, to accord him a hearing. Upon receipt of such request the carrier shall set a date for hearing which shall be held within ten calendar days of the date of receipt of request therefor. Notice of the date set for hearing shall be promptly given the employe in writing with copy to the organization, by Registered Mail, Return Receipt Requested, or by personal delivery evidenced by receipt. A representative of the organization shall attend and participate in the hearing. The receipt by the carrier of a request for a hearing shall operate to stay action on the termination of employment until the hearing is held and the decision of the carrier is rendered.

"In the event the employe concerned does not request a hearing as provided herein, the carrier shall proceed to terminate his seniority and employment under the Rules and Working Conditions Agreement not later than thirty calendar days from receipt of the above described notice from the organization, unless the carrier and the organization agree otherwise in writing."

This Section 5 of the Agreement has been modified "as of July 1, 1955 to provide that wherever the phrase 'registered mail' now appears * * *, such phrase will read 'registered or certified mail' * * *."

At the time of the oral argument in this case the Carrier's representative was unaware that the Carrier on December 14, 1955 had admitted "* * * that the last several months of the delay in processing the case has been the responsibility of the Carrier * * *" and the time limit provision "* * * is hereby extended to March 14, 1956." This extension eliminates Carrier's first contention.

Carrier contends that the Claim relating to Mr. P. McLaughlin is moot under Section 1 of the Union Shop Agreement. It is their contention that this section states that the Union Shop Agreement has application only to "employees" who are "subject to the rules and working conditions agreements between the parties hereto," and that Mr. McLaughlin resigned from Carrier's service March 23, 1955.

The evidence shows that on March 8, 1955, the Organization's General Chairman served notice on Carrier's Assistant Vice President, that both Trackman P. McLaughlin and W. Zbronski had failed to comply with the terms of the Agreement and requested that they be notified in accordance with the provisions of Section 5(a) of the Agreement. Both men were employed by Carrier on above date.

Our only question here is did the Carrier violate the provisions of the Agreement in refusing to send the notices to Mr. P. McLaughlin because "he has failed to pay the required dues" and Mr. W. Zbronski because "he has failed to pay the required initiation Fee and Dues".

Section 1 of the Union Shop Agreement between the parties ". . . all employees of the Carrier . . . shall, as a condition of their continued employment subject to such agreement, **become members** of the Organization party to this agreement representing their craft or class . . . and thereafter **shall maintain membership** in such organization; . . ." (Emphasis mine.)

Section 4 of the Union Shop Agreement provides that membership in the Organization requires the payment of "periodic dues, initiation fees" as long as they are uniformly required as a condition of acquiring or retaining membership. There is no contention by the Carrier or evidence in the record to show that the dues or initiation fee required were not those required by all other members of the respective craft of Mr. McLaughlin and Mr. Zbronski.

We agree with the findings of this Board in Award No. 5348 when it was held that: "He was an employe at the time of the rule violation. As said by Referee Carter in Award No. 4461, the Organization has the authority to police the Agreement. Unless penalties and wage losses can be asserted by the Organization, its primary method of compelling enforcement of its Agreement is gone. The fact that the Claimant may have died since the claim first arose was not considered as a bar or the determination of the

claim on the merits in Award 5190; nor that the individual involved disclaimed any right to reparations (award 4461). The same principles apply with respect to an employee who has resigned after the occurrence of the violation."

The record shows that both Mr. P. McLaughlin and Mr. W. Zbronski were both in the service of the Carrier on March 8, 1955, and that the Carrier violated the provision of the Union Shop Agreement in refusing to notify them as requested by the Organization.

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;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 5th day of August, 1959.