

Award No. 9388
Docket No. TE-8385

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Martin I. Rose, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS
NORFOLK AND WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Norfolk and Western Railway that:

1. The action of the Carrier in transferring work performed by the employees of the Carrier at City Point Junction Tower to employees of the Atlantic Coast Line Railroad at Petersburg, Virginia, on or about November 17, 1954, was in violation of the agreement between the parties; that

2. The work thus transferred to Atlantic Coast Line Railroad employees shall be restored to the employees of the Norfolk and Western Railway Company; and that

3. H. R. Geiger, P. W. Leftwich and/or all other employees of the Norfolk and Western Railway Company adversely affected by such violative action on the part of the Carrier shall be compensated for any loss in earnings during the period of time that such transfer of work to Atlantic Coast Line Railroad employees is permitted to continue.

EMPLOYES' STATEMENT OF FACTS: For many years prior to November 17, 1954, three positions of operator-levermen at Petersburg, Virginia, have been listed in the Telegraphers' Agreement with the Norfolk and Western Railway. The prevailing agreement, effective December 1, 1939, lists these positions as follows:

"NORFOLK DIVISION

Petersburg	First O. & L.	\$.755
	Second O. & L.	.755
	Third O. & L.	.755"

The rates of pay have been adjusted from time to time since 1939, and on November 17, 1954, were fixed at \$1.805 per hour. The office was known as "D" Tower.

of differences arising, can result only by sustaining and relying on agreements entered into by the authorized representatives of the employees' organizations."

Second Division Award 186:

"The security of labor organizations rests on the principle of sustaining the decisions and actions of the duly authorized representatives of labor groups. Were we to begin reversing such decisions and making exceptions to this principle, we would be establishing precedents that would be detrimental to and that would eventually destroy the very structure of collective bargaining."

Fourth Division Award 1023:

"The binding settlement of disputes by duly authorized representatives of the parties is a fundamental keystone of any labor agreement. * * * those settlements have been reached by the duly authorized representatives of the parties and those settlements are binding upon the carrier, its officials, its agents, the employees, their representatives and the Organization. No procedure or principle exists under the agreement between the parties or under the Railway Labor Act for a review or reversal of such settlements."

The claim in the instant case is made in behalf of H. R. Geiger and P. W. Leftwich. Messrs. Geiger and Leftwich were properly displaced at Petersburg November 17, 1954, under provisions of the Washington Agreement and the 11-3-54 Agreement, and, therefore, it is the Carrier's position the claim in behalf of these employees finds no support in any rule of the Telegraphers' Agreement.

In connection with that part of the claim, "all other employees of the Norfolk and Western Railway Company adversely affected," the Carrier calls attention to the first sentence of Article V, Section 1, (a), of the Time Limit on Claims rules, effective January 1, 1955, and which reads:

"All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based." (Emphasis ours.)

It is the Carrier's position that the language "the employee involved" requires the naming of the individuals for whom a claim is presented, and, therefore, contends your Board is without authority to consider that part of the instant claim for "all other employees of the Norfolk and Western Railway Company adversely affected."

The use of ACL telegraphers in the N&W-ACL joint interlocking station at Petersburg was in accordance with the 11-3-54 Agreement; therefore, Article 1 was not violated by the Carrier as alleged by the Employees. The Carrier respectfully requests dismissal of the claim.

OPINION OF BOARD: This claim is based on the establishment of the joint interlocking plant at Petersburg, Virginia, on November 17, 1954. The plant was placed in operation pursuant to a Joint Agreement, dated November

3, 1954, entered into by the parties and the Atlantic Coast Line Railroad Company. The Carrier contends that the Joint Agreement is a complete defense to the claim.

The record shows that ever since operation of a joint interlocking plant at the location mentioned was proposed, the parties have been in dispute as to whether or not such plant would constitute a "coordination" within the meaning of the Washington Job Protection Agreement, dated May 21, 1936, to which they were signatories. They have embodied reference to that dispute in the Joint Agreement to the extent that Section 6 thereof states:

"This Memorandum Agreement is without prejudice to the position of the Order of Railroad Telegraphers as stated in their letter of October 16, 1953, addressed to Mr. H. C. Wyatt, Vice-President and General Manager, Norfolk and Western Railway Company, Roanoke, Virginia, and Mr. W. S. Baker, Assistant Vice-President, Atlantic Coast Line Railroad Company, Wilmington, North Carolina, reading in part as follows:

'During conference on October 13, 1953, we stated that our position as outlined in the letters written by General Chairmen Wilson and Keller, dated April 1 and 6, 1953, respectively, remained unchanged and that we could not now agree that what is proposed, constituted a coordination as contemplated by the 'Washington Agreement' referred to above'."

The Washington Job Protection Agreement defines the term "coordination" and in Section 13 states:

"In the event that any dispute or controversy arises (except as defined in Section 11) in connection with a particular coordination, including an interpretation, application or enforcement of any of the provisions of this agreement (or of the agreement entered into between the carriers and the representatives of the employees relating to said coordination as contemplated by this agreement) which is not composed by the parties thereto within thirty days after same arises, it may be referred by either party for consideration and determination to a Committee which is hereby established, composed in the first instance of the signatories to this agreement. Each party to this agreement may name such persons from time to time as each party desires to serve on such Committee as its representatives in substitution for such original members. Should the Committee be unable to agree, it shall select a neutral referee and in the event it is unable to agree within 10 days upon the selection of said referee, then the members on either side may request the National Mediation Board to appoint a referee. The case shall again be considered by the Committee and the referee and the decision of the referee shall be final and conclusive. * * *"

We must respect the machinery accepted by the parties for the resolution of a dispute concerning "coordination". Such a dispute has arisen in connection with the establishment of the joint interlocking plant and is referred to in the Joint Agreement which concerns operation of the plant. Considerations of comity suggest that we should refrain from action under such circumstances. See Awards 8039, 6302. The claim should be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim should be dismissed in accordance with the Opinion.

AWARD

Claim dismissed in accordance with the Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of May 1960.