Award No. 9435

Docket No. CL-8171

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas C. Begley, Referee

PARTIES TO DISPUTE:

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

SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes:

1. That the Carrier restore to Stores Department employes, the work of preparing journal box packing in rolls, and the issuing of such journal box packing (To Mechanical Department Employes) as was the practice at Spencer, N. C., and Hayne, S. C., for a period of years prior to 1940 when the work of preparing the journal box packing in rolls was discontinued. Beginning in 1950, the practice of preparing the journal box packing in rolls was restored, but instead of restoring the work to proper Storehouse Men (Dope House or Oil House Men), the work was assigned to and, since that date, has been assigned to and has been required of Carmen (Carmen Helpers) Mechanical Department employes covered by an entirely different agreement.

2. That proper Stores Department employes (Storehouse Men) be compensated for any and all monetary loss suffered as of May 22, 1950, at Hayne, S. C., and as of October 8, 1950, at Spencer, N. C., and subsequent thereto until all work is restored under the Clerks' Agreement.

EMPLOYES' STATEMENT OF FACTS: This is a resubmission of a dispute originally submitted to your Board on December 1, 1952, covered by Docket CL-6477. On June 18, 1954, in Award 6681, the following Opinion, Findings and Award were issued:

"OPINION OF BOARD: It appears from the record in this case that the Carrier Members of the Board objected to the Board's assuming jurisdiction in this docket because "there is another or other parties whose interest might be affected by an Award."

"That this is true also appears from the claim which says that the work for which claim is made "has been assigned to and has been

It is the respondent's further position that in the event the Third Division should accept jurisdiction in the instant dispute and sustain the Employes' claim, in disregard of the record which warrants either a dismissal or a complete denial thereof, the penalties claimed by the Employes should be denied because of the Employes' failure to comply with the orderly procedures prescribed in the amended Railroad Labor Act and in the agreement rules in effect between the parties with regard to the presentation of claims and grievances.

Inasmuch as it is uninformed as to whether the Employes will rest on the record in Docket CL-6477, or if they will elect to ignore that record and attempt to amend the position they advanced therein, the Carrier reserves the right to submit such additional facts, evidence and arguments as it may conclude are necessary in reply to the Organization's ex parte submission, including any subsequent oral arguments or briefs the petitioner may present in this dispute.

All that is contained herein has been both known and available to the Employes and their representatives.

Oral hearing is requested.

OPINION OF BOARD: It is undisputed that the claim before us is a resubmission of the identical dispute that was dismissed "without prejudice" by this Division on June 18, 1954, in Award 6681. This question has come before the Board on other occasions, specifically in Awards 9025, 9254, and 9255, and Interpretation No. 1 to Award 1740 of the Second Division.

This Referee is in accord with the thinking of the Referee who sat with the Third Division in rendering Awards 9254 and 9255, wherein he states that he "considers the use of the words 'without prejudice' unfortunate if they were intended to convey the meaning urged by the Carrier". However, this Referee is also inclined to follow precedent on the point of issue, particularly in view of the Railway Labor Acts' requirement that where no money award is concerned, as in the present case, the Board's Awards shall be final and binding upon both parties to the dispute.

It is our opinion that the Board has no jurisdiction over the claim before us in view of Award 6681.

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 claim are respectively Carrier and Employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

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

That the claim is improperly before the Board.

AWARD

Claim dismissed as per Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago,Illinois, this 24th day of May, 1960.