

Award No. 10818

Docket No. MW-10212

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Preston J. Moore, Referee

PARTIES TO DISPUTE:

CLINCHFIELD RAILROAD COMPANY

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

STATEMENT OF CLAIM: Claim of the Brotherhood of Maintenance of Way Employees that the Clinchfield Railroad Company violated the Agreement with the Brotherhood of Maintenance of Way Employees in assigning certain positions effective December 30, 1957, and specifically that A. D. Evans be assigned to a section with headquarters at Kingsport, Tennessee; that P. H. Flanary be assigned to a section with headquarters at Johnson City, Tennessee; and that E. A. Jones be assigned to a section with headquarters at St. Paul, Virginia.

CARRIER'S STATEMENT OF FACTS: Pursuant to its program of modernizing its methods in construction and maintenance work Clinchfield Railroad, effective December 27, 1957, mechanized such work to the extent that a readjustment of its Maintenance of Way forces was necessary. Accordingly, on December 1, in order that ample notice might be extended to the employees who would be affected, Carrier notified all employees that effective at the close of work December 27, 1957, all positions of Foreman, Assistant Foreman, Apprentice, and Laborer would be abolished in all section gangs, and that effective the same date the positions of Welder, Assistant Welder, and Welder Helper in track-welding gangs were abolished. Attached hereto as Carrier's Exhibit A is a copy of the notice extended to employees by Carrier's Chief Engineer. The effect of such notice was to abolish 26 sections.

Concurrently, nine completely new positions in section gangs were established and Bulletin No. 6, dated December 1, 1957, was issued in order that employees might make applications for all of the positions outlined in the bulletin up to Tuesday, December 10, to be assigned effective 7:30 A.M., Monday, December 30. Copy of such bulletin is attached hereto as Carrier's Exhibit B.

On December 20 the Carrier received telegram from Vice President J. H. Hadley, of the Brotherhood of Maintenance of Way Employees, protesting the consolidation of seniority districts and the manner in which new positions had been assigned. Such telegram read as follows:

"The consolidation of seniority districts and the manner in which new position has been assigned is being vigorously protested by the employees affected and a meeting with you is requested in connection therewith for Monday 10 A.M., December 23rd."

was proposed by the Carrier, was negotiated and consummated at its insistence and that it covers all claims. Any claim which is not handled in accordance with this rule just is NOT validly submissible to this Board. Yet the Carrier seeks to do just that in this case.

The Carrier asked for and obtained a rule which requires claims to follow certain procedural handling before they can be validly submissible to the Board. Then it seeks to completely avoid the force and effect of that same rule by prematurely submitting a claim to this Board which has not even been given birth under the mother claim and grievance rule.

We challenge the Carrier to submit copies of any letters wherein a claim such as that erroneously described in the Carrier's letter of January 25, 1958 was ever presented in accordance with the Claim and Grievance Rule. Let it show how and when such an alleged claim was ever presented in writing to its Chief Engineer who is the Carrier officer authorized to receive claims under the provisions of the Claim and Grievance Rule. The Carrier cannot make such showing.

We reiterate that the Employees have never presented a "claim" such as that which is here attributed to the Brotherhood of Maintenance of Way Employees that this purported "claim" is outside the jurisdiction of this Division for the reason that it has never been handled on the property in the usual and customary manner such as is required under the provisions of the Railway Labor Act.

Consequently, the Claim here erroneously described by the Carrier should be dismissed as non-existent and as not having been handled by the Carrier in the usual and customary manner.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto is by reference made a part of this Submission.

We respectfully request that the claim be allowed.

It is hereby affirmed that all data herein submitted in support of our position have been made known to the Carrier and made a part of the question in dispute.

OPINION OF BOARD: This is a dispute between the Clinchfield Railroad Company and the Brotherhood of Maintenance of Way Employees.

On January 25, 1958, the Carrier served notice of intention to file an ex parte submission with this Division covering an "unadjusted dispute between Clinchfield Railroad Company and the Brotherhood of Maintenance of Way Employees." In that notice of intent, the Carrier identified the alleged unadjusted dispute as follows:

"STATEMENT OF CLAIM: Claim of the Brotherhood of Maintenance of Way Employees that the Clinchfield Railroad Company violated the Agreement with the Brotherhood of Maintenance of Way Employees in assigning certain positions effective December 30, 1957."

By letter dated January 31, 1958, the Brotherhood denied the existence of any such claim as described in Carrier's notice of intent, *supra*.

The Carrier's ex parte submission is dated February 1, 1958, and in it they state the claim as follows:

"STATEMENT OF CLAIM: Claim of the Brotherhood of Maintenance of Way Employees that the Clinchfield Railroad Company violated the Agreement with the Brotherhood of Maintenance of Way Employees in assigning certain positions effective December 30, 1957, and specifically that A. D. Evans be assigned to a section with headquarters at Kingsport, Tennessee; that P. H. Flanary be assigned to a section with headquarters at Johnson City, Tennessee; and that E. A. Jones be assigned to a section with headquarters at St. Paul, Virginia."

In their ex parte submission, and their oral argument on March 10, 1959, which is in effect a rebuttal, the Brotherhood continuously denied the existence of any such claim as described by the Carrier.

In accordance with the Railway Labor Act, and the Board's Rules of Procedure, either party (or the parties jointly) may bring a dispute — claim or grievance — to the Board.

There is no doubt that there was discussion and disagreement between the parties in connection with changes made by the Carrier in December, 1957. The record is not clear as to the exact substance of the dispute, nor the extent to which the parties disagreed thereon.

It is evident that the "Statement of Claim" was substantially changed between the time of Carrier's Notice of Intent to file, and the date of its ex parte submission. The Brotherhood simply denied the existence of a claim such as described in either document.

We do not believe there is sufficient evidence in the record to properly identify a clear-cut dispute between the parties on which we might properly rule.

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.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September 1962.