Award No. 11484
Docket No. MW-10963

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY OF TEXAS

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

(1) The Carrier violated the effective Agreement when it laid off track laborer Juan DeLeon on October 25, 1957 and failed and/or refused to permit him to displace junior track laborer J. D. Baxley;

(2) Track Laborer Juan DeLeon now be allowed compensation equal to that paid to junior track laborer J. D. Baxley for the entire period beginning with November 1, 1957, during which claimant DeLeon was laid off and junior track laborer J. D. Baxley retained in service.

EMPLOYES' STATEMENT OF FACTS: The controlling Agreement does not contain a classification of or rate of pay for chauffeurs or truck drivers within the Track Sub-department. Because of a previous controversy similar to the instant one, the Carrier sought to negotiate a classification of and rate of pay for positions of Track Department Truck Driver. Because the rate of pay which the Carrier sought to establish for positions of Truck Driver was unacceptable and because of other onerous conditions similarly sought by the Carrier with respect to positions of Truck Driver, no agreement has been reached on the establishment of a classification of and rate of pay for a Truck Driver.

Both the Claimant employe and junior laborer Baxley hold some seventeen (17) years seniority as track laborer. The Claimant, however, is the senior of the two employes, holding seniority as a Track Laborer as of February 17, 1941, while Mr. Baxley holds seniority as a Track Laborer as of May 22, 1941. During the seventeen years of service as a Track Laborer by the aforesaid two employes, it has never before been contended that Mr. Baxley acquired a "super seniority" because of his alleged qualifications to operate a track motor car or the substitute therefor (a highway truck), nor has it been heretofore contended that the Claimant's right to exercise his seniority as a track laborer

a sustaining award may be arrived at. The Carrier accordingly requests the Third Division to deny the claim in its entirety.

All data submitted in support of the Carrier's position have been heretofore submitted to the Employes or their duly accredited representatives.

The Carriers request ample time and opportunity to reply to any and all allegations contained in Employes' and Organization's submission and pleadings.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the Organization and Employes in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Third Division, National Railroad Adjustment Board, deny said claim and grant said Railroad Companies, and each of them, such other relief to which they may be entitled.

(Exhibits not reproduced.)

OPINION OF BOARD: It is not denied by the Petitioner in the instant dispute that a conference was neither requested nor held; Carrier contends, consequently, that this Board is without jurisdiction to determine the merits of the claim.

The question raised by the Carrier has been discussed in many prior awards of this Board. Many Federal Courts have held that the Adjustment Board has no authority to adjudicate a dispute unless the statutory requirements of the Railway Labor Act are met which unconditionally impose upon all Carrier and Employe representatives a legal duty to hold a conference in connection with each dispute that they are unable to settle by other means. A conference must be a part of the usual manner of the handling of the dispute on the property — it is a jurisdictional requirement and cannot be waived by the parties.

This entire subject is examined in a recent Award 11434; see also Award 10939.

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 does not have jurisdiction over the dispute involved herein;

AWARD

Claim dismissed for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 7th day of June 1963.