Award No. 11737
Docket No. CL-10843

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Arthur Stark, Referee

PARTIES TO DISPUTE:

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

TEXARKANA UNION STATION TRUST

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

(1) That Carrier violated and continues to violate the Clerks' current Agreement at Texarkana Union Station when it failed to call and use Claimants for work on Saturdays and Sundays, and, instead, sued, or uses, persons without antecedent seniority for performing the Mail Baggage Handler work on Saturdays and Sundays, beginning August 31, 1957.

(2) That the following named Mail and Baggage Handlers be compensated for eight hours time at the time and one-half rate for each Saturday and/or Sunday, beginning with Saturday, August 31, 1957, they were available for work and were not used, until violation is corrected:

Employe	Assigned Hours	Rest Days
G. D. Skinner	7:30 AM — 4:00 PM	Saturday-Sunday
J. L. Dossey	7:30 AM — 4:00 PM	Friday-Saturday
H. C. Stephens	2:30 PM — 11:00 PM	Friday-Saturday
J. W. Attaway #2	2:30 PM — 11:00 PM	Sunday-Monday
E. C. Westmoreland	6:30 AM — 3:00 PM	Saturday-Sunday
J. C. Russell	2:30 PM — 11:00 PM	Friday-Saturday
V. D. Fowler	2:30 PM — 11:00 PM	Friday-Saturday
J. A. Cannaday	2:30 PM — 11:00 PM	Sunday-Monday
Alvin Eaves	2:30 PM — 11:00 PM	Saturday-Sunday
P. Poag	2:30 PM — 11:00 PM	Saturday-Sunday
E. R. Hudman	2:30 PM — 11:00 PM	Friday-Saturday
W. L. Pedron	7:30 AM — 4:00 PM	Sunday-Monday
J. P. Edwards	2:30 PM — 11:00 PM	Saturday-Sunday
W. H. Austin	2:30 PM — 11:00 PM	Sunday-Monday

NOTE: That a joint check of Carrier's payroll and other records be made to determine extent of violation and reparations due each Claimant.

Furthermore, the basic theory of the Brotherhood's case is that the regular men will make more money, if we can be prevented, by any such devious device, from hiring additional employes, except for work that the existing employes cannot do at overtime rates in addition to their regular assignments. The purpose of the plan is to increase the pay per hour of the existing employes. This would make it cost the Company more to handle the mail. As the cost of handling the mail by train increases, the difference between the cost of train mail and air mail diminishes. Already there is considerable support for proposals to raise all postal rates to those for air mail, and to carry as much of the mail as possible by air, so that all mail for any point in the U. S. will be delivered overnight. This threatens the whole mail operation at the Texarkana Union Station Trust, and the jobs of all of the mail handlers employed by this Carrier and represented by this Brotherhood.

The Carrier suggests that the Brotherhood try to learn to be content with collecting the golden eggs as they are laid by the goose, and not let its eagerness for more gold lead it to kill the goose entirely.

The Carrier respectfully requests the Board to dismiss or deny all claims involved in this case.

All known relevant argumentative facts and documentary evidence are included herein. All data in support of Carrier's position has been presented to the employes or duly authorized representatives thereof and made a part of the particular question in dispute.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier contends, preliminarily, that this case should be dismissed for lack of jurisdiction since no conference was held on the property in accordance with requirements of the Railway Labor Act and Circular No. 1, the Board's Rules of Procedure. Section 2, Second of the Act declares, in part, that "All disputes . . . shall be considered . . . in conference between representatives designated and authorized to confer, by the carrier . . . and by the employes thereof interested in the dispute." Section 3, First (i) of the Act requires that "The disputes . . . growing out of grievances or out of the interpretation or application of agreements . . . shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board . . ." The Board's rules provide, in part, that "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act . . ."

The relevant facts, briefly, are as follows: The original claim was submitted in writing by Petitioner's Local Chairman on October 18, 1957. It was denied in Carrier's October 23 letter. Petitioner's General Chairman appealed, in writing, on December 16. Carrier's highest designated officer, G. R. French, scheduled a conference (in a January 14, 1958 letter to the General Chairman) for January 21. On January 20 the General Chairman advised F. M. Conder, Carrier's Assistant Director of Personnel, by long distance phone, that he would not be able to attend the conference. Another date was not set. (The General Chairman states that he noted in his file that (1) he had told Conder he was not in a position to set a definite conference, (2) Conder would write either declining the claim or agreeing that

time limits would be waived for a certain number of days after conference was held. Carrier denies there was any such understanding.) On January 21 Carrier submitted its final decision in a four page letter stating in part:

> "You called long distance January 20 and advised you would be unable to attend conference on this case which was scheduled for today, and that due to other matters you were unable to tell when you could attend a conference. In view of time running, a decision is being here rendered in this case."

On March 13, 1958 Petitioner's General Chairman acknowledged receipt of Carrier's January 21 letter and stated that the Organization rejected the declination. Nothing further transpired until Petitioner's September 15, 1958 notice that the matter would be submitted to this Board.

It is clear, from the above recital, that no conference was ever held on the property to discuss the merits of Petitioner's claims. Were the purposes of the Act and the procedures of the Board therefore frustrated, as Carrier argues, or, as Petitioner suggests, was the holding of a conference waived and, in effect, rendered useless and unnecessary by the definitive nature of Carrier's January 21 denial?

There is considerable evidence in the file showing that the "usual manner" of handling disputes between these parties included a conference at the final appeal level. Here, Carrier arranged for a meeting through its January 14 letter, thereby demonstrating its desire to follow regular procedures. Petitioner canceled the conference because of the press of other work. Carrier was then obliged to submit its answer to the claim in accordance with time limit provisions of Article V of the 1954 National Agreement (i.e. by February 16). However, as indicated, the denial was rendered on January 21.

The Act, it is true, does not place responsibility solely on either party for conducting a conference; this is a mutual obligation. However, Board Rules, in restricting consideration of petitions to those whose subject matter has been handled in accordance with the Act, impose a duty on the petitioning party to insure that this requirement has been met. That is not to say, necessarily, that no petition can be accepted unless a joint conference has been held. There may be cases where the parties mutually agree to forego the conference, or where Petitioner requests and Carrier refuses to conduct such meeting. But we are not dealing with that type of situation here.

In the case at hand Carrier made clear its interest in having a conference. It was not obligated, in our judgment, to press for a meeting when Petitioner canceled the scheduled one. It had a right to assume that Petitioner would comply with all legal and procedural requirements (particularly in view of customary procedures on this property) before proceeding to the Board. Carrier's final declination of the claim, within Article V time limits, cannot be construed as a waiver of its desire for a meeting. Neither did the length or fullness of Carrier's denial justify the conclusion that such a meeting would serve no useful function. Parties are expected to put their best feet forward in denials and appeals, if for no other reason than to avoid subsequent charges of "new issues" or "new evidence" being raised. Petitioner's contention that Carrier's denial was in lieu of a conference waiver is not supported by evidence and is denied by Carrier. In view of the fact that all other matters in connection with this case were handled by letter, it is reasonable to assume, moreover, that a conference waiver — had there been one — would also have been set forth in writing.

The importance of conferences has been emphasized in prior awards and need not be repeated here. However, the First Division's comments in Award 16752 are worthy of note:

> "Conferences held in good faith on close questions by representative of the parties, who are highly skilled and well informed, should and no doubt do settle innumerable disputes thereby avoiding the delay, inconvenience, and expense of submitting them to this Board. . . ."

For the reasons set forth above it is our conclusion that these claims must be dismissed.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 has jurisdiction over the dispute herein; and

The claim must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of September 1963.