

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Erie Railroad Company that:

(a) The Carrier violated the provisions of the Signalmen's Agreement when it transferred Susquehanna Signal Gang No. 82 to the Buffalo-Rochester seniority district and refused to advertise the positions in accordance with Memorandum of Agreement on page 53 of the current agreement.

(b) The Carrier now be required to compensate all Buffalo-Rochester men who have prior rights to such positions for any loss sustained.

(c) Any Susquehanna-Delaware men who were arbitrarily transferred to the Buffalo-Rochester district in disregard of the above referred to Memorandum be compensated for all travel and expenses incurred. [Carrier's File: 229.12, Item S-85.]

EMPLOYEES' STATEMENT OF FACTS: Prior to July, 1952, the Buffalo-Rochester Divisions and the Susquehanna-Delaware-Wyoming and Jefferson Divisions were separate seniority districts. (For the sake of brevity, we will hereinafter refer to these two districts as the Buffalo or Susquehanna districts.) On July 9, 1952, the parties to this dispute signed a Memorandum of Agreement to cover combining the seniority rosters of these districts effective August 1, 1952. That memorandum provided, among other things, that employees would have preference to bulletined positions having headquarters on the district on which they had seniority rights prior to August 1, 1952.

For some time a gang was maintained on each of the districts. In March, 1954, the Buffalo district gang was abolished. On or about September 14, 1957, the Susquehanna district gang, No. 82, was moved to the Buffalo district, though the gang positions were not made available to the employees who had prior rights on the Buffalo district. That resulted in a dispute that was progressed on the property, subsequently submitted to this Board and assigned Docket No. SG-11435.

Board to pass judgment upon the facts and the application of the Agreement thereto.

The Brotherhood has simply failed to state a case."

In Third Division Award 7922, the Board said:

"There is insufficient evidence of record to indicate that any employe was injured or performed additional work (without compensation) in violation of any cited rule. We are not certain whether or not the instructions amounted to a change in the method of operation or were in truth and in fact a change in working conditions affected by the unilateral action of the Respondent."

See also, First Division Awards 16637, 16665, 16140, 16520, 15772, 15223 and many others.

As Carrier has heretofore shown, Petitioner in handling this dispute was guilty of two fatal procedural defects under the provisions of Article V of the August 21, 1954 Agreement, and accordingly, this Board should not assume jurisdiction of this dispute and should issue a dismissal decision.

Without distracting from the foregoing, Carrier has also shown that the Memorandum of Agreement on page 53 of the Agreement on which this dispute is founded is not applicable for the reason that there were no new positions either created or required when Signal Gang No. 82 was moved from the Susquehanna operating division to the Buffalo operating division. Therefore, it is clear that the terms of Item 5 of the Memorandum of Agreement never became applicable and, consequently, there could be no violation thereof.

Finally, Carrier has heretofore shown that the monetary claims are so indefinite, uncertain and vague that they are not valid claims, and should be dismissed. Furthermore, Carrier has heretofore shown that Petitioner has never cited a single rule past practice or custom that would support these claims as made, even if they were not so unfathomable.

Based upon the facts and reasons hereinbefore shown, Carrier submits that the claim should either be dismissed or denied.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties entered the following Memorandum of Agreement, effective August 1, 1952:

"Memorandum of Agreement to Cover Combining Rosters of Buffalo-Rochester Divisions with the Susquehanna-Delaware-Wyoming and Jefferson Divisions for Signal Department Employees.

1. Effective August 1, 1952, the roster of signal department employes on Buffalo-Rochester Divisions and Susquehanna-Delaware-Wyoming and Jefferson Divisions will be combined.
2. Signal Department employes holding seniority rights on the Buffalo-Rochester Divisions as of July 31, 1952, will establish a seniority date in their respective class or classes on the Susquehanna-Delaware-Wyoming and Jefferson Divisions after the employes on that roster as between themselves in accordance with their rank number.

3. Signal Department employees holding seniority rights on the Susquehanna-Delaware-Wyoming and Jefferson Divisions as of July 31, 1952, will establish a seniority date in their respective class or classes on the Buffalo-Rochester Divisions after the employees on that roster as between themselves in accordance with their rank number.

4. Signal Department employees hired on and after August 1, 1952, will have seniority rights on the combined roster.

5. Positions will be advertised in accordance with the Signalmen's Agreement and employees having seniority rights on the Buffalo-Rochester Divisions prior to August 1, 1952, will have preference to bulletined positions having headquarters on the Buffalo-Rochester Divisions. Employees having seniority rights on the Susquehanna-Delaware-Wyoming and Jefferson Divisions prior to August 1, 1952, will have preference to bulletined positions having headquarters on the Susquehanna-Delaware-Wyoming and Jefferson Divisions."

The Buffalo district gang was abolished in March 1954.

On or about September 14, 1957, the Susquehanna district gang was moved for a time into what had been the territory of the Buffalo district gang. In that instance, Petitioner herein filed a claim alleging a violation of the Memorandum of Agreement, *supra*, in substance the same as the claim now before us; except, it did not pray for a monetary award. We disposed of that claim in Award No. 11809, wherein we said:

"Since the parties did, in fact, reach agreement regarding future handling, and since a further decision on the merits of the instant claim would be academic, the cause having ceased and there being no monetary claim, the instant claim will be dismissed."

It is to be noted that in Award No. 11809 we made no finding as to whether Carrier's action in moving the Susquehanna gang to the Buffalo district, without bulletining the positions, violated paragraph 5, of the Memorandum of Agreement. We dismissed the case without passing upon the merits of the claim. Therefore, although Award No. 11809 was final and binding on the parties as to the claim presented, it does not stand as *stare decisis* of the issue whether Carrier's complained of action was violative of the Agreement. Consequently, it is of no aid to us in this case.

On or about November 10, 1958, Carrier again moved the Susquehanna gang to the former territory of the Buffalo district gang without bulletining the positions. This gave rise to the claim now before us. *Inter alia*, Carrier timely denied it for the given reason that it failed to satisfy Article V of the National Agreement of August 21, 1954.

Article V, 1.(a) of the National Agreement provides that "All claims or grievances must be presented in writing by or **on behalf of the employe involved**. . . . In our interpretation of this provision in Award No. 11372, we held: (Emphasis ours.)

"We interpret the phrase 'on behalf of the employe involved' to mean that the employe or employes 'involved' must be described in the claim with such particularity as to make his or their identity known to the Carrier under the circumstances prevailing.

* * * * *

'Employees involved' we hold to mean employees adversely affected by an alleged violation of a collective bargaining agreement. It is such employees who must be described so as to satisfy the 'particularity' test set forth in the preceding paragraph. A mere assertion by a petitioner that a carrier can ascertain the names of the employees involved from its records has no probative value. When a carrier avers that the claim as presented does not satisfy the test then a petitioner has the burden to prove, by evidence in the record, that identity of the employee(s) involved is known to carrier; conversely, the defense asserted by carrier is sham and frivolous."

Considering the claim in the instant case in the light of the Memorandum of Agreement alleged to have been violated, the claim, *prima facie*, fails to satisfy the particularity test which we described in Award No. 11372; and, which we found indispensable to perfection of a valid claim. The National Agreement compels us to dismiss the claim.

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 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; and

That the claim, as presented, does not satisfy the requirements of Article V, 1.(a) of the National Agreement of August 21, 1954.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of April 1964.