

Award No. 14091
Docket No. CL-14870

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David Dolnick, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYEES**

**SOUTHERN PACIFIC COMPANY
(Pacific Lines)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5527) that:

(a) The Southern Pacific Company violated the current Clerks' Agreement between the parties when it failed to render a decision within ten (10) days after completion of an investigation involving Mr. A. W. Butchee, Cashier, Phoenix Union Depot; and,

(b) The Southern Pacific Company shall now be required to cause Mr. A. W. Butchee to be restored to service with the Phoenix Union Depot with seniority therein and seniority with the Atchison, Topeka and Santa Fe Railway System unimpaired; and cause Mr. A. W. Butchee to be compensated for all wage loss from June 21, 1963 until restored to service with seniority right unimpaired as hereinbefore stated; account procedural violation stated in paragraph (a) and improper dismissal from service resulting therefrom by the Atchison, Topeka and Santa Fe Railway System.

EMPLOYEES' STATEMENT OF FACTS: There is in evidence an Agreement bearing effective date October 1, 1940, reprinted May 2, 1955, including revisions, (hereinafter referred to as the Agreement) between the Southern Pacific Company (Pacific Lines) and its employees represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees (hereinafter referred to as the Petitioner) which Agreement is on file with this Board and by reference thereto is hereby made a part of this dispute.

1. The Southern Pacific Company and the Atchison, Topeka and Santa Fe Railway System are parties to an agreement by which they jointly operate the Phoenix Union Depot on an alternate year basis. All of the employees performing service for the Phoenix Union Depot (hereinafter referred to as the Depot) are either employees of the Southern Pacific Company or the Atchison, Topeka and Santa Fe Railway System.

current agreement between carrier and its clerks at any time. As heretofore shown, Phoenix Union Depot is a separate entity owned and operated by carrier and the Santa Fe, manned by their respective employees who maintain their identity with the employing road at all times, Santa Fe employees having seniority on that railroad's Albuquerque Division and carrier's employees having seniority on its Tucson Division. While supervision of the facility alternates yearly between the two railroads, their respective employees continue to man the station without any change in their status. The carrier asserts that there is no relationship whatever of Santa Fe employees at Phoenix Union Depot to the current agreement between Southern Pacific Company (Pacific Lines) and its clerks represented by the petitioner.

"(b) Carrier failed to comply with the provisions of Rule 46 of the current Southern Pacific Clerks' Agreement by not rendering a decision within ten (10) days as required by the rule."

Carrier asserts there was no violation of the current Southern Pacific Clerks' Agreement in handling of this case as the claimant was not a Southern Pacific clerk. He was, as petitioner admits, a Santa Fe clerk.

Following the investigation of July 1, 1963, held with claimant as result of his conduct and actions on June 21, 1963, claimant was advised of his dismissal by letter of July 10, 1963 (Carrier's Exhibit B), from Santa Fe Superintendent C. E. Rollins. The fact that carrier was supervising Phoenix Union Depot during 1963 had no bearing whatever on the claimant's seniority status with the Santa Fe and carrier asserts that only that railroad could terminate his employment relationship. That is precisely what was done and carrier asserts properly so.

The carrier here asserts that there is no bases or merit for the claim in this docket; that claimant, a Santa Fe employe, is not covered by the current agreement between carrier and its clerks; and that if there is a dispute to be adjudicated it addresses itself to the Santa Fe and its clerks represented by petitioner. Carrier respectfully requests that the claim be dismissed.

CONCLUSION

The carrier respectfully submits that having conclusively established that the claim is entirely without merit, it should be dismissed.

(Exhibits not reproduced.)

OPINION OF BOARD: The only questions before the Board are whether a proper decision was rendered within ten days after the completion of the investigation, and whether Carrier is a proper party to these proceedings.

Claimant was an employe of the Atchison, Topeka and Santa Fe Railway System. He was assigned to a position at the Phoenix Union Depot which was operated jointly by the AT&SF and the Southern Pacific Company on an alternate year basis. All employes assigned to the Depot were employes of one or the other of the two railroad companies.

In June, 1963, the Southern Pacific Company was the Operating Company in charge of the Depot. On June 21, 1963, the Trainmaster of the Operating Company suspended Claimant from service. On the same day that company's Assistant Superintendent charged Claimant with the violation of that Com-

pany's Rule G of General Rules and Regulations, and directed Claimant to attend an investigation. A hearing and an investigation were held on July 1, 1963, and on July 10, 1963, an officer of the AT&SF, the Non-Operating Company, notified Claimant that, as a result of the investigation, he was removed from service because of the violation of the Southern Pacific Company Rule G.

Employees contend that the Southern Pacific Company, the Operating Company, was obligated to render a decision within ten days after July 1, 1963, as provided in Rule 46 of the Agreement between the Clerks and that Company. Since the Operating Company did not render such a decision within ten days, Claimant must be reinstated with seniority unimpaired and with full compensation for lost wages.

It is admitted by both parties that Claimant was an employee of the Non-Operating Company. Employees' Statement of Claim requests that Claimant "be restored to service with the Phoenix Union Depot with seniority therein and seniority with the Atchison, Topeka and Santa Fe Railway System unimpaired . . ." (Emphasis ours.) Santa Fe employees are in a separate seniority district.

The Agreement between the two Carriers contains the terms, conditions and obligations for the operation of the Depot. Article II, Section 5, thereof, reads:

"Both parties agree to comply, and to cause their respective employees to comply, with such rules and regulations as may be by the parties hereto mutually agreed upon from time for the operation of said Union Station." (Emphasis ours.)

No serious question exists that Claimant was obligated to comply and work under the Rules and Regulations of the Operating Company.

Article II, Section 2 of the Carrier's Operating Agreement provides for the administrative procedures and methods to be followed by the Operating Company. The last sentence thereof says:

"Any of the said joint agents and joint employees may be dismissed by the Operating Company for cause shown but shall be dismissed forthwith by the Operating Company upon written demand of the Non-Operating Company made by its Superintendent or a higher operating officer, for any violation of Section 4 of Article II hereof or for cause shown." (Emphasis ours.)

It is the clear intent of the Carriers that while all joint employees are obliged to comply with the Rules and Regulations of the Operating Company, and the Operating Company has the right to dismiss all joint employees at the Depot, the Non-Operating Company, nevertheless, retains the right to direct the Operating Company to dismiss an employee on its seniority roster "for cause shown."

The Operating Company has no right to question the reason for the discharge by the Non-Operating Company of its own employees. This is true even though the discharge may be without just cause and may be in clear violation of the collective bargaining agreement of the Operating Company. Such a wrongful discharge, if one exists, is a matter which must be resolved, between the discharged employee and the Non-Operating Company. The Operating Company is not a party to such a dispute.

In the case at hand, Claimant was discharged by his employer, the Non-Operating Company, for alleged failure to comply with Rule G, Rules and Regulations of the Operating Company. Irrespective of the merits, and notwithstanding the terms and conditions of Clerks' Agreement with the Operating Company, the Non-Operating Company could and did discharge Claimant. The Operating Company, when it was notified of Claimant's discharge on July 10, 1963, no longer had jurisdiction over Claimant as an employe at the Depot. It is not a proper party to these proceedings.

Claimant's remedy for alleged wrongful discharge is against the Non-Operating Company. For this reason, the claim is 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 of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier is not a proper party to these proceedings.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of January 1966.