



Award No. 15606
Docket No. MW-16314

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

BANGOR AND AROOSTOOK RAILROAD COMPANY

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

(1) The Carrier violated the Agreement when it disqualified and demoted Section Foreman William L. McCue effective at the close of work on January 13, 1965.

(2) Mr. William L. McCue be restored to his position as foreman on Section No. 232 and compensated for all wage loss resulting from the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Prior to the close of work on Wednesday, January 13, 1965, the claimant was the regularly assigned foreman of the crew assigned to Section No. 232, with headquarters at West Seboois, Maine. The claimant had established seniority as a track foreman as of May 6, 1926. The claimant received a letter reading:

"Oakfield, Maine,
January 9th, 1965

Mr. William L. McCue
Foreman Section No. 232
West Seboois

Dear Sir:

Confirming conversation between you, Chief Engineer Swales and Superintendent of Track G. L. Swett, at West Seboois, on January 7th.

This Company requires that a Section Foreman be able to fulfill all duties of that position and on crews where trucks are assigned it is necessary for the Section Foreman to be able to operate the truck in the performance of his duties. This last necessarily means that a Section Foreman must have a State of Maine Operator's License in order to legally operate the truck or vehicle when called upon. Since

"September 1, 1965

Mr. Thomas Christensen
General Chairman
Brotherhood of M. of W. Employes
Northeastern System Federation
79 Farmington Ave., Room 210
Hartford, Connecticut

Dear Sir:

Your letter of August 10, 1965 appealing Mr. Swales' decision of June 28, 1965 relative to the claim entered February 15, 1965 in behalf of W. L. McCue, is acknowledged.

Each Section Foreman on this property is provided a motor car or highway truck and it is not unreasonable for us to expect him to operate same in the performance of his duties. We do not necessarily insist that the Foreman operate the truck himself if another member of his crew is qualified and willing to perform this function for him. However, in the final analysis, it is the Foreman's responsibility to make certain that someone in his crew is qualified to operate the vehicle and if no other member of the crew is willing or qualified, he must do the driving himself. In the instant case, the crew consisted of a Foreman and one man and the Trackman did not have an operator's license, thus he was not qualified to drive the truck.

I must, therefore, decline this claim.

Yours very truly,

/s/ H. C. Duffy
Manager of Operations

cc: P. H. Swales
J. H. Daly"

On May 6, 1966, Manager of Operations H. C. Duffy received a copy of a letter which had been addressed to S. H. Schulty, Executive Secretary—Third Division, NRAB by President H. C. Crotty of the Brotherhood of Maintenance of Way Employes announcing his intention to file an ex parte submission in this dispute.

OPINION OF BOARD: Carrier moves that the Claim be dismissed for lack of jurisdiction in that no conference was had as required by the Railway Labor Act and the Rules of Procedure of the National Railroad Adjustment Board.

The record shows that from the date of the filing of the Claim, no conference was requested or held relative to it. We have previously held that a conference is essential to confer jurisdiction upon this Board. Awards 10852, 10939, 11136, 11484, 12499, 13721. Motion granted.

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 lack of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 31st day of May 1967.
