Award No. 15696
Docket No. CL-16102

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

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

ILLINOIS TERMINAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5964) that:

(1) Carrier violated the Implementing Agreement of March 5, 1965, particularly that paragraph reading "Incumbents on the nine (9) abolished positions **may take separation pay** or have prior rights in bidding on the five (5) new positions and their seniority standing in Districts 3, 4 and 5 will determine their rights in applying for the new positions listed above" when it refused to pay Messrs. H. W. Schlag and H. H. Makepeace separation pay which they requested, and

(2) That Carrier shall now be required to pay Messrs. Schlag and Makepeace separation pay in the amount of 360 days times their rate of pay of the position held on March 31, 1965. (Emphasis ours.)

EMPLOYES' STATEMENT OF FACTS: On February 3, 1965, the Carrier notified the Organization of its intent to transfer certain station accounting work then being performed by employes on Seniority Rosters 3, 4 and 5 located at Decatur, Illinois; Alton, Illinois; and McKinley Junction, Illinois to Seniority Roster 2 located in the General Offices at 710 North 12th Boulevard, St. Louis, Missouri.

Pursuant to the Notice of February 3, 1965, conferences were held between the parties which culminated in the Implementing Agreement of March 5, 1965, which is attached hereto and identified as Employes' Exhibit A.

While the matter was being considered by the parties, the Carrier addressed a communication to each of the nine (9) employes who would be affected by the transfer of work in an effort to determine which of them were interested in following their work to St. Louis. Copy of this communication is attached and identified as Employes' Exhibit B.

Under date of May 11, 1965, General Chairman Dwyer addressed a letter to Mr. Horan requesting that separation pay be made to Mr. Schlag, which letter is attached and identified as Carrier's Exhibit R. Mr. Dwyer also addressed a letter to Mr. Horan dated June 30, 1965, requesting separation pay for Mr. Makepeace, which is attached as Carrier's Exhibit S. Carrier replied to both requests by letter dated July 12, 1965, copy of said letter being attached as Carrier's Exhibit T. Under date of December 8, 1965, General Chairman Dwyer addressed another letter to Supervisor of Personnel Horan requesting separation pay for the claimants, which is attached as Carrier's Exhibit U. Mr. Horan replied to this request on February 4, 1966, such reply being attached as Carrier's Exhibit V.

Subsequently Carrier has received a copy of letter dated February 15, 1966 from the Grand Lodge of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes to Mr. J. E. Wolfe, Chairman, National Railway Labor Conference, and Mr. G. E. Leighty, Chairman, Employes' National Conference Committee (attached hereto as Carrier's Exhibit Y) stating that the Brotherhood intended to file a submission with the Disputes Committee as established by Article VII of the February 7, 1965 National Stabilization of Employes Agreement to settle the unadjusted dispute with this Carrier. Carrier filed submission with the Disputes Committee on March 16, 1966 (see Carrier's Exhibit Z attached hereto). Under date of March 4, 1966 the Grand Lodge of the Brotherhood also submitted a letter to the Third Division of the National Railroad Adjustment Board of the Organization's intent to file an Ex Parte submission to the Board within 30 days and Mr. S. H. Schulty, under date of March 11, 1966 notified Carrier to submit Carrier's submission on the unadjusted dispute to the Board by April 4th, 1966.

(Exhibits not reproduced.)

OPINION OF BOARD: The parties herein are parties to the February 7, 1965 National Stabilization of Employment Agreement. They implemented that Agreement by instrument executed on March 5, 1965 in compliance with Article III of the Stabilization Agreement. The dispute herein concerns interpretation and application of both Agreements. Petitioner, on February 15, 1966, referred the dispute to the Disputes Committee as provided for in Article VII of the Stabilization Agreement which, in pertinent part, reads:

> "SECTION 1. Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier may be referred by either party to the dispute for decision to a committee consisting of two members of the Carriers' Conference Committees signatory to this agreement, two members of the Employes' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the commitee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. **Decisions so arrived at shall be final and binding upon the parties to the dispute.**" (Emphasis ours.)

Subsequently, on March 4, 1966, it gave written notice of intention to file ex parte submission with this Board. The filing with two forums creates a procedural issue as to whether we should exercise our jurisdiction.

In Award No. 14979 we held that "procedures established and accepted by the parties themselves for resolving disputes under the Job Stabilization Agreement should be respected." We reaffirm that holding. However, the Finding in that Award "That the Agreement was not violated;" and the Award "Claim denied" were in error in that we did not consider the case on its merits. The Claim should have been dismissed without prejudice, and we so rule in the instant case. See Award No. 14471.

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 Claim should be dismissed without prejudice in accordance with the Opinion.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June 1967.

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