



Award No. 15880
Docket No. MW-16366

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nicholas H. Zumas, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

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

(1) The suspension of Truck Driver Emerson Knost "beginning May 3 and ending May 5, 1965" was unjust, on the basis of unproven charges and wholly disproportionate to the nature of the charge placed against him.

(2) The charge placed against Mr. Emerson Knost be stricken from the record and payment allowed for monetary loss suffered by him.

OPINION OF BOARD: Claimant was employed by Carrier as a truck driver. On April 6, 1965, a truck driven by Claimant collided with another vehicle at an intersection in St. Louis, Missouri. Carrier charged him with failing to operate the motor vehicle in a safe and proper manner, and after a hearing, suspended Claimant for three days.

Claimant, through the Organization, contends that: 1) the evidence adduced at the hearing did not sustain the charge, and 2) under the circumstances, the discipline was disproportionate to the alleged offense.

Carrier asserts: 1) that no conference was held on the property and therefore this Board is without jurisdiction to consider the claim, and 2) there was sufficient evidence to sustain the claim and the discipline imposed was proper.

With respect to the question of jurisdiction, it is clear that a conference was not held. Neither party requested a conference and neither was denied an opportunity for a conference. The record indicates, however, that there was an "invitation" to confer. In his letter of appeal to the Chief Engineer dated June 5, 1965, the General Chairman advised: "If conference is desired regarding this matter, I will be glad to meet with you at your convenience." Also in his letter of appeal to the Manager of Labor Relations dated September 20, 1965, the General Chairman stated: "If a conference is desired in this matter please advise time and place at your convenience. I shall be happy to discuss the matter at any time you request." Carrier made no response to either of these invitations.

As a general proposition, it is well established by a long line of awards by this Board that the failure to have a conference on the property precludes consideration of the merits of the claim. The rationale of most of these awards is that the provisions of Section 2, Second and Section 2, Sixth of the Railway Labor Act are mandatory in their requirement that a conference be held, and absent such conference, the Board has no jurisdiction. See Award Nos. 14873, 14847, 13721, 13120 and 13097.

There is another line of awards in apparent conflict with what may be regarded as the majority opinion. These awards, in effect, hold that Carrier cannot defeat jurisdiction because of the absence of a conference where there was no request or denial of an opportunity to hold a conference. See Award Nos. 12853, 10950, 10675, and 10567.

These apparently conflicting awards can be reconciled.

There is an obvious and proper qualification to the rule that this Board may not vest itself with jurisdiction where there is no conference on the property. If one of the parties refuses or fails to avail itself of a conference where there is an opportunity to do so, it cannot then assert the defense of a lack of jurisdiction. To allow otherwise would do violence to and frustrate the intention of the statute.

In Award No. 13120, the Board after dismissing the claim for lack of jurisdiction because of the absence of a conference further held:

"This Opinion is not to be construed to mean that either party can evade this Board's jurisdiction by refusing or otherwise evading a conference when requested. The statutory indispensable condition precedent is satisfied if either party requests a conference and the other party fails, refuses or evades its obligation to confer within a reasonable time."

And in Award No. 13959, the Board said:

"The only qualification is that a party who by actions or non-feasance evades a conference on the property is estopped from raising a jurisdictional issue because of lack of a conference. Such maneuvers would be repulsive to the statutory intent."

Accordingly, we find that this record does not preclude Claimant from having his claim considered by this Board.

We come next to the question of whether there was sufficient evidence in the record to sustain the charge of failure to operate the truck in a safe and proper manner.

A careful review of the record makes it abundantly clear that Claimant, by his own admission, was negligent in the operation of his truck under the circumstances then and therein question. While it may be argued that Claimant's negligence was not the sole cause of the accident, Carrier was warranted in finding that Claimant operated his truck in a careless and improper manner. Further, there is nothing in the record which would compel a finding by this Board that the sanctions imposed were arbitrary or capricious.

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 has jurisdiction over the dispute involved herein; and

The action taken by Carrier in suspending Claimant for three days is sustained.

AWARD

Claim is denied.

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

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of October 1967.