Award No. 16283
Docket No. MSX-17059

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bernard E. Perelson, Referee

PARTIES TO DISPUTE:

JOSEPH E. STARZEC

RAILWAY EXPRESS AGENCY, INC.

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

STATEMENT OF CLAIM: That the employer entered into a new shop agreement with the union and under the terms of the union, the employe was to pay his dues to the new union, and that the employe did tender the necessary duties in a timely manner and fashion, and that the union denies receiving the dues and requested the employer to discharge the employe in accordance with the terms of the new agreement.

OPINION OF BOARD: The Claimant attempts before the Board to assert a claim that the Carrier and the Brotherhood of Railway and Steamship Clerks violated the effective Agreement covering Carrier's clerical and station employes.

This Board is without jurisdiction to decide a dispute between an employe and his Organization (Section 3, First (i) of Railway Labor Act). We must, therefore, dismiss the claim against the Brotherhood of Railway and Steamship Clerks.

A Union Shop Agreement was duly entered into between Railway Express Agency, Inc., and its employes represented by the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which agreement by its terms became effective on April 1, 1952.

Under date of December 10, 1965, the Brotherhood was certified by the National Mediation Board as the representative, for the purposes set forth in the Railway Labor Act, of Railway Express Agency employes of the class or craft of clerical, office, station and storehouse employes. This class or craft included employes formerly represented by the International Brotherhood of Teamsters, one of whom was the Claimant in this dispute.

The Union Shop Agreement provided, among other things, that employes must maintain membership in the organization representing them so, effective with the certification, employes formerly represented by the Teamsters,

including the Claimant, were obligated to become members of and maintain membership in the Brotherhood.

Under date of June 22, 1966, General Chairman H. J. Ripp, of the Brotherhood wrote to R. A. Blackstone, Division Operations Manager of the Railway Agency in Chicago, as follows:

> "You are hereby notified that the employe listed below has failed to comply with the terms of the Union Shop Agreement between the carrier and this organization dated March 31, 1952.
>
> You are accordingly requested to take action as provided for in the said agreement."

Under date of June 29, 1966, the Railway Agency representative wrote to the Claimant, as follows:

> "Mr. Starzec: Please be advised that the B. of R. C. has notified us that you have failed to comply with the terms of the Union Shop Agreement effective April 1, 1952. Under the terms of the Agreement such charge, if true, will result in your dismissal July 11, 1966.
>
> If you dispute the fact that you have failed to comply with this Agreement, and wish to continue your employment with the Company, you must request a hearing within ten days of the date of this notice. This request must be in writing and addressed to the undersigned at the above address."

Under date of July 6, 1966, the Claimant did request a hearing and on July 14, 1966, R. L. Owen, the Acting Operations Manager of the Railway Agency, wrote to the Claimant as follows:

> "You have been granted this hearing on Monday, July 18, in the office of Mr. T. M. Halford, per R. L. Owen, Acting Operations Manager, 432 W. Polk Street. It was suggested that you bring with you to this hearing such witnesses, or documentary proof of your position in the form of membership cards, current dues receipts, correspondence, or other evidence as may be helpful to the presentation of your case."

The hearing was held as scheduled with the Claimant being present.

Under date of July 23, 1966, the following communication was forwarded to the Claimant by Mr. Owen:

> "The minutes of the Hearing held in the office of Operations Manager–Vehicle, REA Express, 432 W. Polk St., Chicago, Ill. at 11:30 A.M. Monday, July 18, 1966 have been thoroughly reviewed.
>
> It has been established that you failed to make application to the Brotherhood of Railway and Steamship Clerks, Lodge 2350 within the terms of the Agreement which established the fact that you had 60 days in which to make such application commencing April 1, 1966.

Under the circumstances, you are hereby notified of your dismissal from the service of the REA Express Company effective July 11, 1966."

Under date of July 29, 1966, Claimant wrote to J. N. Meisten, Vice President-Personnel, inquiring as to his status. On August 8, 1966, he was advised as follows:

"Our operating officials in Chicago inform me that as a result of a hearing you were dismissed from the service of REA for violation of the Union Shop Agreement."

Under date of November 16, 1966, an attorney, H. H. Margues, of Chicago, wrote to Mr. Meisten with reference to this matter and was advised by letter dated November 29, 1966, that he take the matter up with Mr. Yarwood, Director of Operations of REA Express in Chicago. Mr. Margues wrote to Mr. Yarwood by letter dated December 1, 1966, and under date of December 12, 1966, Mr. Yarwood wrote to Mr. Margules, as follows:

"This has reference to your letter which was received in this office on December 5, 1966, appealing the decision dismissing Joseph E. Starzec from the service of this Company for non-compliance with the Union Shop Agreement.

Your appeal is declined, since it was not made within nine calendar days of July 23, 1966, the date of the decision dismissing Mr. Starzec from service, as is required by the Union Shop Agreement.

Even if the appeal had been timely, Mr. Starzec, by his own admission, refused to pay dues for January, February and March of 1966. This, in itself, constitutes non-compliance with the Union Shop Agreement. Furthermore, General Chairman Ripp testified that the Brotherhood of Railway Clerks never received a money order from Mr. Starzec to cover the payment of dues for April, May and June of 1966."

Mr. Margules wrote to Mr. Yarwood on December 15, 1966, and under date of March 7, 1967, wrote that he intended to submit this dispute to this Board. The letter of March 7, 1967, was addressed to Mr. Meisten and received by this Board on April 3, 1967.

After a careful examination of the record in this dispute, we find that the claim has not been properly progressed on the property, as required by Section 4 (b) of the Union Shop Agreement between the Railway Express Agency, Inc., and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, which became effective April 1, 1952. We find that the Claimant did not appeal the decision dismissing him from service for failure to comply with the Union Shop Agreement to the Director of Operations, the highest officer of the Carrier designated to handle such appeals within nine calendar days of the date of such decision. It must, therefore, be dismissed. See Awards 15384, 14600, 14258, 13307, 12776, 11980 and 10548 of the Third Division and Awards 17203, 17204, 17205, 18635 and 20216 of First Division.

The claim will be dismissed.

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 between the Employe and the Carrier involved herein.

That the Agreement was not violated.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 10th day of May 1968.

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