



Award Number 17639

Docket Number TE-17152

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Charles W. Ellis, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION

ATLANTA AND WEST POINT RAIL ROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Employees Union on the Atlanta and West Point Railroad, that:

1. Carrier violated and continues to violate the Agreement between the parties when on August 1, 1965 it began to withhold money from the earnings of J. W. O'Brien, allegedly representing overpayments made to him during the years 1962 through 1965.
2. Carrier shall reimburse Mr. O'Brien for all money so deducted from his earnings.

EMPLOYEES' STATEMENT OF FACTS: An Agreement between the Atlanta and West Point Railroad and this Union, dated September 16, 1956, as amended and supplemented, is available to your Board and by this reference is made a part hereof.

This claim was presented and progressed in accordance with the time limits provided by the Agreement up to and including appeal and conference with the highest officer designated by the Carrier to receive appeals. Having failed to reach a settlement, the Employees now appeal to your Honorable Board for adjudication.

The handling on the property has been lengthy and thorough as evidenced by exact copies of the documents and correspondence exchanged between the parties attached to this submission as TCU Exhibits 1 through 28. Exhibits 1 through 10 being documents and correspondence exchanged between the Claimant and the Carrier, and TCU Exhibits 11 through 28 are copies of correspondence and documents exchanged between Carrier and officers of this Organization.

The Atlantic Coast Line Railroad Company and the Atlanta and West Point Railroad Company, prior to May 1, 1961, maintained and operated separate station facilities at LaGrange, Georgia. The parties are also parties to the agreement of May 1936, known as the Washington Job Protection Agreement. On October 17, 1960, the two Carriers gave notice under Section 4 of that Agreement to the Organizations affected, of Carrier's intention to consolidate station and yard facilities at LaGrange, Georgia.

An Agreement was reached by the parties on November 10, 1960 which provided the standard Washington Job Protection Agreement protection

rule to prevent Carrier from collecting overpayments or to require Carrier to file claims in such cases.

(Exhibits not reproduced)

OPINION OF BOARD: The Atlantic Coast Railroad and the West Point Railroad Company consolidated station and yard facilities at La Grange, Ga. The agreement effecting the consolidation provided the Standard Washington Job Protection Agreement would apply to affected employees.

Claimant made application for displacement allowance and monthly payments were made to him under the provision of the Washington Job Protection Agreement. During the course of several years overpayments were made to Claimant totaling \$986.44. Commencing in August, 1965 Carrier withheld a sum of money each month from Claimant's paycheck in order to recoup the overpayment.

Claimant immediately objected to the withholding and has made claim to be reimbursed for the sums withheld.

Carrier's first defense in that this Board is without jurisdiction to hear this matter because the parties in Section 2 of their agreement for consolidation provided that Section 13 of the Washington Job Protection Agreement would be deleted and the following inserted in lieu thereof:

"In the event any dispute or controversy arises (including disputes described in Section 5 but excepting those defined in Section 11) with respect to the protection afforded by this agreement, including an interpretation, application or enforcement of any of its provisions which cannot be settled by the carrier or carriers and the employee, or his authorized representative, within 30 days after the dispute arises, it may be referred by either party to an arbitration committee for consideration and determination. Upon notice in writing served by one party on the other of intent by that party to refer the dispute or controversy to an arbitration committee, each party shall, within 10 days, select one member of the arbitration committee and the two members thus chosen shall select a third member who shall serve as chairman. Should the two members be unable to agree upon the appointment of the third member within 10 days, either party may request the National Mediation Board to appoint the third member. The decision of the majority of the arbitration committee shall be final and conclusive" (Emphasis mine.)

Carrier contends that Claimant must exhaust his remedies provided to him in the foregoing section. It is not disputed that he has not done that.

Organization's theory is that what we have before us is a claim matter which is properly before this Board and not a Section 13 Committee matter. By the nature of the process Claimant could make his initial claim without raising the Washington Job Protection Agreement. That agreement was injected into the controversy by the Carrier as a defense to Claimant's claim.

This Washington Job Protection Agreement has, from the beginning however, been recognized by both sides as the foundation of this dispute. It has been so intertwined with the facts of the matter that it can fairly

be said that this matter is a " * * dispute or controversy arise(ing) * * * with respect to the protection afforded by (the) agreement * * *".

Sufficient authorities have been cited which uphold and enforce a system of settling disputes which has been agreed upon by the parties themselves. Award 9388 (Rose) Award 10360 (Schedler) Award 14471 (Ives) and Award 14979 (Ritter).

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 Employees involved in this dispute are respectively Carrier and Employees 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 Claim should be dismissed for failure of the Claimant to exhaust the contractual remedies available to him.

A W A R D

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of January 1970.