Award No. 18485

Docket No. SG-18546

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Melvin L. Rosenbloom, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Lehigh Valley Railroad Company that:

(a) Carrier violated Award of Arbitration Board 298, Sections 1-A3 and 1-B3, and Interpretation No. 8 of January 12, 1968, by changing the construction gang headquarters twice in twelve months.

(b) Carrier be required now to allow gang men as follows $7.00 a day from December 26, 1967, and continuing into 1968 for each and every day until this violation is corrected:

Donald Robbins	December 26, 1967 until corrected.
John Schmidinger	December 26, 1967 until corrected.
James Lightcap	December 26, 1967 until corrected.
Andrew Beatty	December 26, 1967 until April 31, 1968 then from August 4, 1968 until corrected.
James Bennett	April 16, 1968 until corrected.
George Fech	April 16, 1968 until corrected.
H. Markow, Jr.	May 27, 1968 until August 30, 1968.

EMPLOYES' STATEMENT OF FACTS: Claimants in this dispute are Donald Robbins, John Schmidinger, James Lightcap, Andrew Beatty, James Bennett, George Fech and H. Markow, Jr., members of a signal construction gang who are recruited from an entire seniority district.

May 9, 1967, the headquarters of the gang was designated as Slatington, Pa. by bulletin. The headquarters of the gang was changed by bulletin to Allentown, Pa. on December 12, 1967, and again on July 29, 1968, to Bethlehem, Pa. The change in headquarters was made on each occasion by abolishing the gang positions and readvertising them at the new headquarters.

It is obvious that the carrier was attempting to evade the provisions of Article I, Section 1-A3 and B3 of Arbitration Award No. 298.

Carrier's Exhibit G is a letter dated May 26, 1969 from General Chairman Lightcap to Chief of Personnel Midgley calling attention to the same claim and referred to interpretations 12, 38 and 52, as now controlling.

Carrier's Exhibit H denied the claim again, Chief of Personnel's letter July 15, 1969 to General Chairman Behney.

The Brotherhood of Railroad Signalmen of America on this property selected Section I, A, B and C of the Arbitration Board No. 298. They further elected not to choose Section II or Section III of Award No. 298.

(Exhibits not reproduced.)

OPINION OF BOARD: Claimants contend that Carrier violated the Award of Arbitration Board 298. That Award deals generally with the circumstances under which employes are entitled to lodging, meals, reimbursed expenses and other benefits in connection with their employment. Claimants maintain that Carrier tried to circumvent the intent of the Award by changing the headquarters of a construction gang twice in a twelve month period.

Carrier defends by asserting that the headquarters were not changed at all, but in fact were disolved as jobs were completed and newly established at other locations as unrelated jobs were commenced. Further, Carrier maintains that the Arbitration Award is inapplicable in any event since the portions relied upon by Claimants pertain only to operations where employes are required to live in camp cars and no camp cars were maintained at any location where a construction gang was assigned.

The resolution herein requires a determination of whether the Award of Arbitration Board 298 was intended to cover the situation presented herein and, if so, whether its terms were violated by the conduct of the Carrier. Thus, the dispute centers upon a difference as to the meaning and application of the Arbitration Award and Interpretation No. 12. Such a dispute is outside the jurisdiction of the Third Division. Section 14 of the Arbitration Agreement dated July 19, 1967 directs that all differences as to the meaning and application of the Award shall be referred to the Arbitration Board for final and binding resolution.

The Third Division has consistently held that where the parties have agreed by contract to a procedure for resolving particular disputes which provides for the submission of such disputes to a particular Board or other forum for final and binding disposition, such a dispute may not properly come before the Third Division. Our position must be the same when the procedure is provided by an Arbitration Award which has the force and effect of a contract.

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

A difference between the parties over the meaning and application of the Award of Arbitration Board No. 298 exists. The Third Division has no jurisdiction over such a dispute.

AWARD

Dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 31st day of March, 1971.

DISSENT TO AWARD 18485, DOCKET SG-18546

It is our position that the Majority has erred in declining to take jurisdiction in the dispute, the circumstances being analogous to those giving rise to Interpretation No. 12 to the Award of Arbitration Board No. 298. In response to the Dissent of the Carrier Members in Award 18381, the Labor Members correctly explained as follows:

> "The Railway Labor Act recognizes two main types of disputes: (1) Major disputes relate to formation of agreements, matters of interest; and, (2) Minor disputes involve application of agreement provisions to specific fact situations, matters of right.
>
> The Act provides, with respect to major disputes, for voluntary collective bargaining about matters of interest so that agreements — providing specific rights — may be reached. If these unassisted efforts fail to result in agreement, the Act provides for mediation under the auspices of the National Mediation Board. If agreement is reached in this manner, the written accord is identified as a 'mediation agreement' attested by the mediator involved. Provision is made by the Act, Section 5, Second, for interpretation by the Mediation Board if a 'controversy arises over the meaning or the application of such agreement.'
>
> If no agreement results from mediation, procedures are provided for voluntary arbitration, Section 7 of the Act. Such procedures, if utilized by the parties, require a binding agreement concerning the specifics to be affected. And one of the mandatory requirements of such an agreement is that it must contain a provision for interpretation by the Arbitration Board in case of a controversy arising over the meaning or the application of the provisions of the award to be made by such Board, Section 8(m) of the Act.
>
> It must be emphasized that arbitration of major disputes is not compulsory. But when agreed to, this procedure results in rules or pro-

visions precisely the same as if they were arrived at in mediation or by unassisted bargaining of the parties.

Once an agreement is reached, disputes about its provisions as applied to every-day fact situations are termed minor disputes, subject to the decisional procedures and jurisdiction of the Adjustment Board if the parties themselves fail to resolve them. It is well settled that jurisdiction of the Adjustment Board is exclusive and may not be encroached upon even by the courts. (Special Boards of Adjustment, provided by the Act are merely extensions of the Adjustment Board). Slocum v. Delaware, Lackawanna & Western RR (339 U. S. 239).

What, then, is the purpose of the requirement in the Railway Labor Act for interpretation by the Mediation Board of Mediation agreements, and by Arbitration Boards of Arbitration awards? It must be noted that the provisions of Section 5, Second, and Section 8(m) are essentially similar, and certainly have the same intent as to the purpose to be achieved.

The Mediation Board, in its annual reports, deals specifically with this question. We quote from the current 'Thirty-Sixth Annual Report of the National Mediation Board,' pages 39 and 40:

'1. INTERPRETATION OF MEDIATION AGREEMENTS

Under section 5, second, of the Railway Labor Act, the National Mediation Board has the duty of interpreting the specific terms of mediation agreements. Requests for such interpretations may be made by either party to mediation agreements, or by both parties jointly. The law provides that interpretations be given by the Board within 30 days following a hearing, at which both parties may present and defend their respective positions.

In making such interpretations, the National Mediation Board can consider only the meaning of the specific terms of the mediation agreement. The Board does not attempt to interpret the application of the terms of a mediation agreement to particular situations. This restriction in making interpretations under section 5, second, is necessary to prevent infringement on the duties and responsibilities of the National Railroad Adjustment Board under section 3 of title I of the Railway Labor Act, and adjustment boards set up under the provisions of section 204 of title II of the act in the airline industry. These sections of the law make it the duty of such adjustment boards to decide disputes arising out of employe grievances and out of the interpretation or application of agreement rules.

The Board's policy in this respect, was stated as follows in Interpretation No. 72(a), (b), (c), issued January 14, 1959:

"The Board has said many times that it will not proceed under section 5, second, to decide specific disputes. This is

not a limitation imposed upon itself by the Board, but is a limitation derived from the meaning and intent of section 5, second, as distinguished from the meaning and intent of section 3.

We have by our intermediate findings held that it was our duty under the facts of this case to proceed to hear the parties on all contentions that each might see fit to make. That was not a finding, however, that we had authority to make an interpretation which would in effect be a resolution of the specific dispute between the parties. The intent and purpose of section 5, second, is not so broad.

The legislative history of the Railway Labor Act clearly shows that the parties who framed the proposal in 1926 and took it to Congress for its approval, did not intend that the Board then created would be vested with any large or general adjudicatory powers. It was pointed out in the hearings and debate, that it was desirable that the Board not have such power or duty. During the debate in Congress, there was a proposal to give the Board power to issue subpoenas. This was denied because of the lack of need. It was believed by the sponsors of the legislation that the Board should have no power to decide issues between the parties to a labor dispute before the Board. The only exception was the provision in section 5, second. This language was not changed when section 3 was amended in 1934 and the National Railroad Adjustment Board was created.

We do not believe that the creation of the National Railroad Adjustment Board was in any way an overlapping of the Board's duty under section 5, second, or that section 3 of the act is in any way inconsistent with the duty of the Mediation Board under section 5, second. These two provisions of the act have distinctly separate purposes.

The act requires the National Mediation Board upon proper request to make an interpretation when a 'controversy arises over the MEANING or application of any agreement reached through mediation.' It would seem obvious that the purpose here was to call upon the Board for assistance when a controversy arose over the meaning of a mediation agreement because the Board, in person, or by its mediator, was present. Thus the Board was in a particularly good position to assist the parties in determining 'the meaning or application' of an agreement. However, this obligation was a narrow one in the sense that the Board shall interpret the 'meaning' of agreements. In other words, the duty was to determine the intent of the agreement in a general way. This is particularly apparent when the language is compared to that in section 3, first (i). In that section the National Railroad Adjustment Board is authorized to handle DISPUTES growing out of grievances or out of the interpretation or application of agreements, whether made in mediation

or not. This section has a different concept of what parties may be concerned in the dispute. That section is concerned with disputes between an employe or group of employes, and a carrier or group of carriers. In section 5, second, the parties to the controversy are limited to the parties making the mediation agreement. Further, making an interpretation as to the meaning of an agreement is distinguishable from making a final and binding award in a dispute over a grievance or over an interpretation or application of an agreement. The two provisions are complementary and in no way overlapping or inconsistent. Section 5, second, in a real sense, is but an extension of the Board's mediatory duties which the added duty to make a determination of issues in proper cases."'

"In harmony with this sound doctrine the Adjustment Board has many times decided "minor disputes' involving rules arrived at by means of arbitration. A few examples are Third Division Awards 4967, 13314, 14268, 14269, 14270, 14271, 14407, 16111, 16156, 17486. In some of these cases, as 4967, no question of the Adjustment Board's jurisdiction was raised. In others, as 13314, arguments similar to that of the dissenting Carrier Members here were considered and rejected."

Award 18485 errs, and I dissent.

W. W. Altus, Jr.
Labor Member

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