



Award No. 18810

Docket No. CL-18914

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William M. Edgett, Referee

PARTIES TO DISPUTE:

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

**PENN CENTRAL TRANSPORTATION COMPANY,
NORTHEASTERN REGION**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6800) that:

1. The carrier violated and continues to violate the terms of the Union Shop Agreement signed August 29, 1952, effective September 15, 1952, when it failed and refuses to notify the following named employes that they were charged with non-compliance of the aforesaid Union Shop Agreement:

Names	Notice Dates	Received by Carrier
Vincent P. DeMaio	October 29, 1969	October 30, 1969
James J. Foley	November 5, 1969	November 6, 1969
Willard F. Clapp	November 19, 1969	November 20, 1969
Jeanne M. Carey	November 19, 1969	November 21, 1969
Ralph Sperandeo	November 19, 1969	November 20, 1969
John J. White, Jr.	November 19, 1969	November 20, 1969
Charles B. Gunn	November 19, 1969	November 20, 1969

2. That the carrier shall be required and ordered to comply with the terms of the Union Shop Agreement.

EMPLOYEES' STATEMENT OF FACT: An Agreement bearing the effective date of September 15, 1952, by and between the parties and referred to herein as the Union Shop Agreement, is in evidence, copies thereof are on file with the National Railroad Adjustment Board.

Under dates October 29, November 5, and November 19, 1969, the following letters were sent:

"October 29, 1969

Registered Mail
Return Receipt Requested

of Traveling Auditor were exempted by the August 27, 1957 agreement. See Carrier's Exhibit No. 1 under heading of Office of Comptroller — "This is understood to include employees in the 'Cost Group' and Traveling Auditors."

At this point General Chairman Adinolfi disclaimed any knowledge of the August 27, 1957 Agreement. After being shown the Agreement Mr. Adinolfi stated that he wished to adjourn the meeting to a later date so he could review his files, and that he would contact the Carrier later and set a date to resume discussion. The next word that Carrier has had concerning this matter was a copy of the letter of April 10, 1970, from Mr. C. L. Dennis, International President of the BRAC, to Mr. S. H. Schulty, Executive Secretary of this Board, of the intention of the BRAC to file ex parte submission with the Third Division of the Board.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier has refused to notify the named employees that the Organization has given it notice of their non-compliance with the Union Shop Agreement of August 29, 1952.

At the outset Carrier takes the position that the dispute was not handled in the usual manner on the property because, as it alleges, the General Chairman asked for a recess of a conference with the final Carrier officer and did not reconvene the conference. The Board rejects the contention that a failure to handle the matter on the property in accordance with the applicable provisions of law and the Agreement has occurred. The Board finds that the matter is properly before it and that it has jurisdiction. Carrier's designated officer had the case before him and had full opportunity to adjust the complaint. A possible misunderstanding concerning a further meeting could in no way have prejudiced Carrier's right to notice and opportunity to deal with the substance of the complaint.

The issue here is whether Carrier is required to give notice to employees whom the Organization alleges have not complied with the Union Shop Agreement. Carrier's response is that because the employees are in positions not covered by the Agreement (in its view) such notice is not required and would be improper. The Organization asserts that the final determination of such questions is for the arbitrator appointed under the Union Shop Agreement in the event the parties are unable to reach an adjustment of the matter.

This question has been before the Board before in Awards Nos. 6744, 7085, 16590, 9121, 10693. In No. 6744 the Board said:

" * * * Otherwise stated by refusal to give notice at the involved stage of the proceeding upon the property on the ground relied on Carrier could make other and subsequent terms of the Agreement wholly unoperative. No such incongruous result is contemplated by the Railway Labor Act or by existing provisions of the Union Shop Agreement. On the contrary, and we now include the merits of the controversy, such Agreement in clear and unequivocal terms required Carrier to give the notice requested by the Organization and thereafter follow the procedure outlined by its subsequent terms and provisions. It necessarily follows Carrier's action resulted in a violation of the Agreement and requires a sustaining Award directing it to comply with the Union Shop Agreement by promptly giving the affected employees the notice requested by the Organization on January 13, 1953, and by thereafter proceeding in accord with the express directions of such Agreement."

The decisions referred to above are to the same effect, holding that Carrier's opinion of the merit of the alleged violation cannot control its obligation to determine the matter under the provisions of the Union Shop Agreement. A party not satisfied with Carrier's decision may then implement the Arbitration provision of the Union Shop Agreement. The final decision on the merits is reserved to the duly appointed arbitrator and Carrier may not frustrate the purpose of the Union Shop Agreement and its arbitration clause by failing to implement the agreed upon procedure.

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

That the Agreement was violated.

AWARD

Claims sustained, Carrier is directed to give notice to the employees named, as provided by the Union Shop Agreement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November 1971.