



Award No. 18880
Docket No. MW-16368

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Thomas L. Hayes, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
CLINCHFIELD RAILROAD COMPANY

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

(1) The Carrier violated the Agreement and established practice thereunder when, effective 8/23/65, without negotiation and agreement with representatives of its Maintenance of Way employees, it discontinued the use of Maintenance of Way Department forces to perform car cleaning work at Kingsport, Tennessee and unilaterally transferred such work to two employees from the freight depot. (Carrier's file BofMofWE)

(2) The work of cleaning cars at Kingsport, Tennessee be restored to Maintenance of Way employees and that Mr. W. P. Fletcher be returned to the duties of car cleaning at Kingsport, Tennessee.

EMPLOYEES' STATEMENT OF FACTS: The work of car cleaning at Kingsport, Tennessee has been assigned to and performed by employees holding seniority rights in the track laborer's class for more than twenty years. Since December 30, 1957, the claimant had been assigned to perform this work on a five day, forty hour per week basis.

Nonetheless, on August 23, 1965, the Carrier discontinued the practice of using track laborers to perform this work and unilaterally transferred the work to two employees from the freight depot who hold no seniority under the scope of our Agreement. Thereafter, the claimant was assigned to work with the section gang.

Claim was timely and properly presented and handled by the Employees at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated July 1, 1964, together with supplements, amendments and interpretation thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: W. P. Fletcher is a Section Laborer holding seniority as such and is assigned to Section 4 with headquarters at Kingsport, Tennessee. He was assigned to such position in ac-

Re: Car Cleaning — Claim of W. P. Fletcher

Dear Sir:

Kindly note the attached papers, concerning above subject, which we are passing to your office for consideration.

The position of our organization is generally set forth in the file and therefore further comments at this time, in our opinion, are not necessary.

Your favorable reply, at an early date will be appreciated.

Yours truly,

/s/ R. R. Painter,
General Chairman"

Claim was finally disallowed by letter of November 5, 1965, as follows:

Erwin, Tennessee, November 5, 1965
File: BofMoWE

Mr. R. R. Painter, General Chairman
Brotherhood of Maintenance of Way Employees
Lock Box 2385
Roanoke, Virginia 24010

Dear Mr. Painter:

Referring to your letter of October 18, Subject: Car Cleaning — Claim of W. P. Fletcher:

There is nothing in the Agreement which makes the work of cleaning cars the exclusive right of Maintenance of Way employes. Cars are cleaned by several crafts and there is no basis for Mr. Fletcher's claim. Accordingly, it is respectfully disallowed.

Yours very truly,

/s/ L. R. Beals,
Personnel Officer and
Assistant to General Manager"

No further correspondence was exchanged, nor was conference requested by the Employes or held. The Carrier considered the claim dropped until on August 12, 1966, the Third Division notified the Carrier that the Brotherhood had filed notice of intention to file a submission in the dispute.

OPINION OF BOARD: We are met with a threshold contention by the Carrier that the dispute is not properly before the Board because no conference was had on the property as required by the Railway Labor Act and the Rules of Procedure of the National Railroad Adjustment Board.

The record contains no proof that a conference was held. We have stated in numerous awards that a conference is a requirement for properly progressing disputes to the Board. Awards 11434, 12499, 13097, 13120, 13959,

16567, 17113, among many others. We find, therefore, that the dispute is not properly before the Board, and it will accordingly 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 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 facts of record do not show that the dispute has been properly progressed to the Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 10th day of December 1971.