NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 20311
THIRD DIVISION Docket Number CL-20299

Irwin M. Lieberman, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes
(Chicago, Milwaukee, St. Paul & Pacific Railroad Company

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-7347) that:

1. Carrier violated the Clerks' Rules Agreement at Chicago, Illinois on April 28, 1972 when it failed to honor an employe's written request and seniority rights to work a vacation vacancy on Position No. 03830.

2. Carrier shall now be required to compensate employe P. J. Lasky an additional eight (8) hours at the straight time rate of pay of Position No. 03830 for the following days:

May 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16 and 17, 1972.

OPINION OF BOARD: Claimant was the regularly assigned occupant of a Train Clerk position with hours of 11 P.M. to 7 A. M. On April 28, 1972 Claimant made written request to General Car Supervisor Hamann to be placed on a temporary vacation vacancy of Utility Clerk with hours of 7 A.M. to 3 P.M. commencing on May 1, 1972. His request was not honored and Carrier used a new employe who had been hired for vacation relief work to fill the vacancy for the three week period. During the period encompassed by the claim Claimant was fully employed and lost no money as a result of not receiving the position in question. The above facts are not in dispute.

The principle issue in this dispute is whether or not Claimant's application for the vacation vacancy was timely and whether or not it was filed with the proper Carrier officer. The relevant Rules are as follows:

"RULE 9 - BULLETINED POSITIONS

(g) New positions or vacancies of thirty (30) days or

"less duration shall be considered as temporary and may be filled by an employe without bulletining; if filled, the senior qualified employe requesting same will be assigned thereto."

"MEMORANDUM OF AGREEMENT NO. 71.

1. In the application of Rules 9(f) and (g) regularly assigned employes in the seniority district making request thereunder will be assigned on the basis of seniority, fitness and ability on the first day which follows the second rest day of the position to which he is regularly assigned, except that in connection with vacation vacancies of 5, 10, 15 or 20 days duration employes may be assigned to the vacation vacancy on any work day thereof but will not be permitted to begin work on the vacation vacancy on either of the rest days of the position occupied at time of request. Such request must be made in writing with the officer having supervision over the position involved at least twenty-four (24) hours in advance of the time he expects to commence filling the temporary or vacation vacancy.

When a regularly assigned employe is assigned as provided herein his regular position will be considered a temporary vacancy."

Carrier contends that Claimant failed to make proper application for the position since he used an obsolete form addressed to the General Car Supervisor, rather than to the Trainmaster, and that the Trainmaster did not receive the form until May 1st. Further, Carrier states that Claimant, by his own admission, was told on April 28th that he must handle his application with Trainmaster Nunley.

Claimant contended, during the handling on the property, that on April 28, 1972 he filled out the form addressed to the General Car Supervisor and sent one copy to the Local Chairman, one copy to the Chief Yard Clerk, and one copy by messenger to the General Car Supervisor in Bensenville. Claimant then states that he talked to the Chief Clerk to the Agent who said that he had talked to Trainmaster Nunley that morning and that Claimant

could not have the position because they had a temporary employe for vacation relief Lined up in accordance with the Trainmaster's orders. Later, at about 11 P.M. on April 28th, Claimant states that he telephoned the General Car Supervisor and asked if anyone with more seniority had bid for the position; he was told that the Trainmaster was handling the matter, that his bid was on the Trainmaster's desk and that he should call the Trainmaster on Monday morning May 1st. None of the above information was denied or contradicted by the Carrier. At a meeting with the Local Chairman on May 4th, the Trainmaster is reported to have said that he did not have to give the job to Claimant. It should be noted that this entire matter could have been resolved at the meeting on May 4th had consideration been given to Claimant's seventeen years' seniority - instead of to the new temporary relief employe.

It is clear that Claimant used an old and incorrectly addressed form to apply for the position - and addressed the request to a supervisor who was not the proper Carrier Officer, as required by Memorandum of Agreement No. 71. However, Carrier admitted that the Trainmaster had the request on his desk on the morning of May 1st and there has been no denial of Claimant's story that all personnel concerned, including the Trainmaster, were aware of his request on April 28th - - considerably in advance of twenty-four hours prior to the job's start. Based on these facts, we must conclude that Claimant was improperly denied the position he applied for.

Carrier contends that Claimant sustained no monetary loss as a result of the dispute, Carrier concludes, therefore that the Board has no jurisdiction to assess a monetary penalty in this case. Petitioner argues that the monetary claim is not for a penalty as such, but rather for damages. There have been many awards dealing with this issue, upholding sharply conflicting points of view. It is our conclusion that no useful purpose is served by the Board finding that the Agreement has been violated and offering no remedy except reprimand to Carrier; such action might well serve to encourage repeated violations of the Agreement and appears to constitute condonation. We believe that the Devaney Emergency Board established in 1937 was correct when it stated: "...experience has shown that if rules are to be effective there must be adequate penalties for violation." We shall affirm the line of Awards that hold that violation of the Agreement requires compensation as reparation for such breach (Award 17973). The measure of damages becomes a difficult question when, as. in the instant case, there are

no yardsticks and little information as to the injury to Claimant. Determinations on this point must be made on a case by case basis. In this case we believe that the Claim should be sustained as presented.

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

That the Agreement was violated.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. W. Paulos
Executive Secretary

Dated at Chicago, Illinois, this 28th day of June 1974.

CARRIER MEMBERS' DISSENT TO AWARD 20311, DOCKET CL-20299

(Referee Lieberman)

In this award the Referee has correctly found that Claimant made absolutely no showing of actual monetary loss or injury flowing from the violation alleged in the claim, and there are no recognized "yardsticks" by which any injury to Claimant can be measured. Inspite of this finding, the Referee has held that Carrier must pay the substantial amount of money that was arbitrarily demanded by Claimant. Not only have these parties failed to provide any penalty for the type of violation alleged in the claim, but they have expressly agreed in Rule 17 (a) of their contract that an employee will simply be made whole when he is assigned by Carrier to a position that is lower rated than his own position.

As authority for giving the Claimant this monetary windfall, the Referee cites Award 17973 of this Board and a statement made by an improperly designated Emergency Board years before the United Stated Supreme Court's significant decisions defining the exclusive jurisdiction of the Adjustment Board.

Award 17973, when read in the light of the facts in that case, clearly contains nothing that supports the allowance of the instant claim. That award is expressly based on the loss of a specific work opportunity by the seniority group to which the claimant therein belonged, and no other employee in the group asserted a right to the work. The claimant therein was the "senior idle" employee in the group. Thus Award 17973, and the awards cited therein, all come under the loss of work opportunity doctrine; but in the instant case no work opportunity was taken away from the Claimant individually or from his seniority group. All that was involved here was the alleged mishandling that caused Claimant to fill a position in his seniority group other than the particular position he now alleges he desired to fill. Both positions were admittedly filled by members of the Claimant's seniority group.

Thus, while it is clear that Award 17973 assessed damages on the basis of a "yardstick" that is well established in the law of damages, it is equally clear that there is no such "yardstick" applicable to the instant case, and the Referee, being an astute lawyer, is keenly aware of this fact.

As construed by the United States Supreme Court, the Railway Labor Act establishes separate and distinct procedures and agencies for interpreting rules as opposed to creating rules for railway employees. The Adjustment Boards have exclusive jurisdiction to interpret and apply existing rules, and that is the limit of their jurisdiction. Emergency Boards are involved in the rule making process. It is one thing for an Emergency Board to say that each rule should include an appropriate "penalty" provision and that such provision should be enforced. It is an entirely different thing to say that referees and labor members of this Board have the power to fashion their own "penalty" rule when the parties to the involved agreement have not seen fit to provide for a "penalty" in their agreement. In the absence of agreement of the parties on a "penalty" rule, this Board's jurisdiction in assessing damages is limited to those damages which can be justified under the accepted rules or yardsticks of the law applicable to labor agreements.

We respectfully submit that the portion of this Award which purports to sustain Part 2 of the claim is void. We also submit that an enlightened reading of the entire record, taking into account the hours of the day and days of the week involved plus the frequent absence of Trainmasters from their offices and the usual conduct of affairs between railroad employees and supervisors, clearly reveals that Carrier's decision was entirely justified and Part 1 of the claim should have been denied.

D L Naylor

P C Carter

W B Jones

D M Yourtee

W F Braidwood

LABOR MEMBER'S ANSWER TO
CARRIER MEMBERS' DISSENT TO
AWARD 20311, DOCKET a-20299 (LIEBERMAN)

Carrier Metiers' dissent can best be described as base sophistry. It contains specious reasoning, fallacious argument, and is intended to deceive. For instance, the dissent's reference to "an improperly designated Emergency Board" is a diluting characterization of a legally-created Railway Labor Act Section 10 Emergency Board appointed by the President of the United States upon appropriate recommendation of the Chairman of the National Mediation Board. Section 10 of the Railway Labor Act states in part:

> "If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this Act and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute." (underscoring added)

The literal language of Section 10 contemplates the establishment of an Emergency Board in matters arising under any or all of the nine preceeding sections of the Act. Obviously, the Mediation Board and the President and even Congress felt that they were acting properly when the Devaney Emergency Board was created on February 8, 1937 to investigate a dispute and make a report relative to a threatened strike among certain operating employes of the Chicago Great Western Railroad because of the failure of the railroad to comply with Awards 1247, 1248 and 1322 of the First Division of the National Railroad Adjustment Board.

I include "even Congress," although Congress is not mentioned in Section 10, because following the release of the soundly-reasoned and articulate report of the Emergency Board (which consisted of The Honorable John P. Devaney, Chief Justice, Minnesota Supreme Court; Mr. Walter C. Clephane, Attorney, Washington, D. C.; and Doctor Harry A. Millis, Professor, University of Chicago), the matter came up on the floor of the Senate. On March 25, 1937, S. R. 101 was introduced by Senator Borah of Idaho. The Resolution mad as follows:

> "Whereas the National Railway Labor Act and amendments thereto were enacted by Congress and approved by the President for the express purpose of supplying machinery for the peaceful adjustment of controversies concerning wages, working

conditions, or other matters, which might arise between the railroads and their employes; and

"whereas an essential part of this machinery is the National Railroad Adjustment Board with headquarters in Chicago, and made up of an equal number of representatives of the carriers and of the recognized unions of the employes; such Board constituting what might be described as a supreme court for the settlement of all disputes between the railroads and their employes; and

"Whereas said Board, after extended hearings and full consideration of the facts, recently decided that the Chicago Great Western Railroad had violated its wage agreement with certain organizations of its employes, and thereupon made awards to individual employes totaling approximately $50,000; and

"Whereas the trustees of the Chicago Great Western have refused to pay said awards, thus setting a precedent which, if it is followed by other railroads, may destroy the machinery set up by Congress for the peaceful adjustment of railroad labor disputes; and

"Whereas an emergency commission selected by the President of the United States, by authority of the Railroad Labor Act, has failed in its effort to persuade the trustees to recognize the validity of awards made by the National Railroad Adjustment Board; and

"Whereas because of the trustee's refusal to pay such awards the railroad labor organizations involved have polled their members and have been authorized by a substantially unanimous vote to withdraw all their members from service on the Chicago Great Western, thus threatening a serious interruption of interstate commerce: Therefore be it

"Resolved, That the Committee on Interstate Commerce, or any duly authorized subcommittee thereof, is authorized and directed to make and to report to the Senate the results of a thorough and complete investigation of all facts relating to the failure of the Great Western Railroad to adjust and settle the awards of the National Railroad Adjustment Board, and to make any recommendations necessary to carry into effect the awards of said Board; and any other facts or circumstances surrounding the failure of the said railroad to abide by the decision of the Board.

"For the purposes of this resolution the comnittee, or any duly authorized subcommittee thereof, is authorized to hold such hearings, to sit and act at such times and places either in the District of Columbia or elsewhere, during the sessions, recesses, and adjourned periods of the Senate in the Seventy-fifth Congress, to employ such experts, and clerical, stenographic, and other assistants, to require by subpena or otherwise the attendance of such witnesses and the production and impounding of such books, papers, and documents, to administer such oaths, and to take such testimony and to make such expenditures as it deems advisable, The cost of stenographic services to report such hearings shall not be in excess of 25 cents per hundred words. The expenses of the committee, which shall not exceed $2,500, shall be paid from the contingent fund of the Senate upon vouchers approved by the chairman."

Six (6) days later on March 31, 1937, Senators Wheeler of Montana, Lewis of Illinois and Barkley of Kentucky made the following statements on the floor of the Senate:

Mr. WHEELER: "Mr. President, on Thursday of last week, the senior Senator from Idaho (Mr. Borah) presented a resolution directing the Committee on Interstate Commerce to inquire into the refusal of the trustees of the Chicago Great Western Railroad to pay certain awards made by the National Railroad Adjustment Board in favor of employes who are metiers of five of the standard railroad labor organizations--the Engineers, the Firemen and Enginemen, the Conductors, the Trainmen, and the Switchmen's Union of North America. The Resolution came before the committee, and we are about to take it up and set it down for hearing; but I am glad to be able to report that since the Senator from Idaho introduced his resolution the trustees of the Chicago Great Western Railroad have agreed to pay the awards in full, thus ending the unfortunate controversy. I have no doubt that the action of the Senator from Idaho in calling the matter to the attention of this body had a most wholesome influence, and contributed materially to the result achieved. In fact, I am sure it was the only thing that compelled the trustees to agree to settle on the basis on which they were justly entitled to settle.

"The amount involved in this case was not great—approximately $50,000--but the principle was of major importance.

"When Congress enacted the amended Railway Labor Act a few years ago, we endeavored to set up machinery which would facilitate the speedy adjustment of disputes between the carriers and their employes. The law recognizes in the most

definite way the railroad worker's right to join the labor organization of his choice. It bans company-supported unions and outlaws the vicious 'yellow-dog' contract. Finally, it sets up what the Senator from Idaho, in his resolution, very happily described as 'a supreme court for railroad labor.' We may later wish to destroy all courts, but the act sets up what is commonly recognized by the railroad employes as a supreme court for railroad labor. This is what is known as the National Railroad Adjustment Board. It consists of 36 members, 18 selected by the carriers and 18 by the standard railroad labor organizations.

"When a dispute arises concerning the proper interpretation of an agreement entered into between a carrier and a union the law contemplates that the representatives of the carrier and the union shall endeavor to reach an understanding. If that proves impossible, then an appeal may be taken to this supreme court-a tribunal made up of equal. numbers of representatives of the carriers and the employes-and all men thoroughly familiar with every phase of railroad work. Should that tribunal become deadlocked, a referee may be called in.

"It is difficult to imagine a fairer, a saner, method of adjusting industrial disputes. That the system has worked is evidenced by the fact that there has been no serious interruption of interstate traffic since this salutary law was enacted.

"The National Railroad Adjustment Board has rendered a great number of decisions. Some were in favor of the unions, and some were in favor of the carriers. As I understand, the unions in every case have accepted the verdict of the Board. In some cases the carriers have not.

"Perhaps the most flagrant example of a carrier's attempt to flaunt decisions of the National Railroad Adjustment Board is to be found in this case of the Chicago Great Western. The awards were made last June and July. They involved a number of individual grievances. The employes were so clearly right that in only one instance did the Board find it necessary to call in a referee.

"Nevertheless, the trustees refused to pay the awards. I am informed they even appealed to Federal Judge Charles E. Woodward, the judge responsible for their appointment. Judge Woodward made the grave mistake of advising the trustees that it was not necessary for them to pay the awards until they were instructed to do so by a court of competent jurisdiction, notwithstanding the fact that he himself was a court of competent

jurisdiction. Of course, that meant a lawsuit, and the unions very properly, in my judgment, refused to become parties to long and expensive litigation.

"They held that if the awards of the National Railroad Adjustment Board were not accepted, and if carriers persisted in appealing to the courts the elaborate system which Congress had devised for the adjustment of disputes between carriers and their employes would be weakened and possibly destroyed.

"So the unions polled their members, and the metiers voted to strike if the trustees did not accept the awards made by the National Railroad Adjustment Board. At that point the President of the United States appointed an emergency board to inquire into the facts, and that board, finding the facts substantially as I have stated them, endeavored to persuade the trustees to enter into fresh negotiations with the unions' representatives.

"These negotiations dragged, and a few days before the Senator from Idaho introduced his resolution the trustees suggested they would settle on the basis of 10 cents on the dollar. Of course, the unions rejected that offer, and now the trustees have paid 100 cents on the dollar.

"In my judgment they paid, it only because of the fact that they were threatened that an investigation into the whole matter would be taken up by the committee on Interstate Commerce.

"All through these proceedings the representatives of the unions exhibited the patience and good judgment which we have cone to associate with the leadership of the standard railroad labor organizations. Sorely provoked, they might have ordered the strike which their members had authorized them to call. Had they done that, we would have had another serious industrial struggle on our hands, and all because two trustees, appointed by a Federal court, refused to comply with the letter and spirit of a law which has won such widespread approbation that even the National Association of Manufacturers--an organization noted for its opposition to trade unionism--has suggested that it might be used as a model for a Federal law to govern all industries.

"I am sure we are all glad the trustees of the Chicago Great Western have retreated from their untenable position. It is to be hoped that the management of other railroads will follow their example.

"We cannot afford to permit the amended Railway Labor Act, or any of its essential features, to be weakened or destroyed by shortsighted employers who, in order to gain a temporary advantage, are willing to invite an industrial war.

"Of course, we should take exactly the same attitude toward the unions should they attempt to scuttle this beneficent legislation. There is not much danger of that however. It is to their credit that the standard railroad-labor organizations sponsored the amended Railway Labor Act--the legislation with which the country is now so pleased. I am sure they will never do anything to jeopardize the structure they assisted in erecting.

"I am sure that if other industrial organizations and other unions would adopt the same methods which have been adopted by the railroad brotherhoods and the railroads, many industrial disputes, such as those from which the country is now suffering, would be avoided, and we would generally be in a very much happier and better state."

Mr. LEWIS: "Mr. President, permit me to say, in connection with the remarks of the able Senator from Montana (Mr. WHEELER), that this subject matter arose in a jurisdiction which I have the honor to represent. When the able Senator from Idaho (Mr. BORAH) presented his resolution I assumed then to state to the Senate that I had been informed that the difference between the company, the trustees, and the men was very slight, and I felt that it could be composed, but that there was a difference as to the facts. The Senator from Idaho stated he was quite sure the resolution would give opportunity of investigation which would reveal the real facts.

"Since then; while I have been in the Senate, I have been advised by the trustees and the counsel for the companies that a composure has been effected, as the Senator from Montana has just related, and I am pleased to join with him and with the officers of the company likewise in felicitations that complete peace and mutual confidence have followed between the company and its men."

Mr. WHEELER: "Mr. President, I wish to say just a word. An award was made by the board and the company offered 10 cents on the dollar in settlement of it. The President of the United States appointed a mediation board, and still the company refused to settle. It was only after a resolution was introduced in the Senate for an investigation of the situation that

the Chicago Great Western finally paid the award, which had been made some time last June.

"I hope that when other disputes of this kind arise the parties will settle them among themselves, following an award by the Board, regardless of whether the award is in favor of the unions or in favor of the companies, and that it will not be necessary every time, in order to get them to settle the award, to have a resolution introduced in the Senate for an investigation of the situation."

Mr. TYDINGS obtained the floor.

Mr. BARKLEY: "Mr. President--"

The PRESIDING OFFICER: "Does the Senator from Maryland yield to the Senator from Kentucky?"

Mr. TYDINGS: "I yield."

Mr. BARKLEY: "I cannot let the opportunity pass without just a word of gratification over the result of this legislation, not only before the Supreme Court but in its operations throughout the country. The cause of my gratification is that it was my good fortune to introduce in the House of Representatives the bill, like one introduced in the Senate by Senator Howell, of Nebraska, and which became known throughout the country then as the Howell-Barkley bill. The railroads desperately fought the measure in the House at that session, and were able to defeat it, but at the end of the session it was suggested by Members of the House and the Senate that the railroads and their employes get together during the recess of the Congress and see whether at the next session legislation of this character might not be enacted without serious opposition.

"As a result of that suggestion the railroads and their employes, after many conferences during the recess, came to an agreement on the principle of the original bill, with very slight amendments, and the bill was enacted at the next session of the Congress. It is gratifying to all those who had any hand in the enactment of the law that it has been one of the most successful laws for settling labor disputes that has ever been placed on the statute books of the United States.

"It is to the credit of both the railroads and the employes that they have in most cases tried in good faith to observe the spirit of the law. We all know that the standard railway brotherhoods are among the highest class of organized employes in the United States, and the success of the law and

its final justification before the Supreme Court in a unanimous decision offer hope that in the near future we may be able to work out legislation which will solve all other industrial disputes with as much efficacy and with as much peace and lack of disturbance."

Mr. WHEELER: "Mr. President, I do not think the Senator from Kentucky was in the Senate when I first spoke, but he refreshes my memory. After the railroad brotherhoods and the railroads agreed upon this particular piece of legislation and both sides came before the Committee on Interstate Commerce of the Senate, the attorney for the National Association of Manufacturers came before tie committee and opposed the proposed legislation, notwithstanding the fact that both sides had agreed to it. Now we find the National Association of Manufacturers lauding the law, stating that it is a good law and that it ought to be worked out in industrial organizations. I am extremely glad to see that the National Association of Manufacturers have finally seen the light and are coming to the conclusion that this is a good law."

For Carrier Members at this late date to characterize the Devaney Emergency Board as "improperly designated" merely because they disagree with its findings and report is silly, or naive, or both. The statement of the Devaney Emergency Board that "experience has shown that if rules are to be effective there must be adequate penalties for a violation" is no less valid today, 37 years after it was made, than when it was originally stated. Fallacious argument of the propriety of the Board's making the statement does not derogate from its soundness.

Tne instant dissent suggests a limit on the Adjustment Board's jurisdiction; hence, that Referees and Labor Members do not have the power to fashion their adequate penalties for violations and, accordingly, that the Adjustment Board is exceeding its jurisdiction in assessing damages or penalties if those damages or penalties cannot be justified under accepted rules or yardsticks of the law applicable to labor agreements. The call by Carrier Members for an artificial limit on the Board's jurisdiction, their mystical reference to the "law applicable to labor agreements," and their accusation that Labor Members and Referees (a majority of the Division) are without authority to properly adjust grievances are designed to confuse, mislead and, importantly, distort the intent of and overturn sound prior decisions of the Board.

More importantly, the manifestation of the philosophy expressed by the Carrier Metiers in their dissent would negate the entire Adjustment Board process. That this philosophy is patently incorrect is easily

demonstrated by merely referring to the three cases that were involved in the dispute that was before the Devaney Emergency Board. It is noted that Awards 1247 and 1248 were decided without a Referee. This means that these disputes were adjusted by the Hoard without being deadlocked. This in turn means that at least one of the Carrier Members serving on the Board at the time Awards 1247 and 1248 were considered joined with the Labor Members in sustaining the claims of the employes and, in this act, made penalty awards totaling $50,000 for the violation of the labor agreements under consideration.

It is stupid to now argue that when a Referee joins with Labor Metiers to create a majority the Board's award granting a penalty for an Agreeeent violation exceeds the Hoard's authority when the record is clear that on occasion Carrier Members have done this very thing and created a majority and sustained claims and awarded payments of substantial penalties.

Carrier Member dissenters cryptically suggest other limits on the authority of the Adjustment Board. About 35 years ago, the Attorney General of the United States had cause to investigate the National Railroad Adjustment Hoard. In his report, he described the purpose of the N. R. A. B. He wrote:

> "Functions . The Board's single purpose is to resolve disputes between employees and carriers growing out of grievances or out of the interpretation and application of labor agreements."

Note the language "out of grievances or out of interpretation and application of labor agreements." It is obvious that this Board is not limited to handling disputes concerning interpretation and application of agreements but also has jurisdiction to resolve disputes growing out of grievances that concern more than the application of an Agreement. This point is buttressed by the statements of the Attorney General making a distinction between the Hoard's functions of "adjustment" and "adjudication." He wrote that the Board's purpose was adjustment and not adjudication. The name Congress gave the Board was the National Railroad Adjustment Board. In the process of adjustment, the Board has wide latitude in fashioning remedies-even to the ordering of the payment of penalties when the Agreement is silent on the issue.

The Adjustment Hoard's authority to award penalties has been adequately reviewed in a number of awards; to name but two, see Awards 15689 (Dorsey) and 19899 (Sickles). That the matter has been in and out of the courts like a fiddler's elbow does not prove that we do not have authority in the area, only that the Board's Carrier Members resent this authority, as in the end the courts have upheld our authority to adjust disputes even when this adjustment provides for the payment of damages.

J. C. Fletcher
Labor Member
8-16-74