

NATIONAL RAILROAD ADJUSTMENT BOARD

Third Division

Wm. H. Spencer, Referee

PARTIES TO DISPUTE:

ORDER OF SLEEPING CAR CONDUCTORS

THE PULLMAN COMPANY

DISPUTE.—"Claim of Conductor J. W. Bringolf for reinstatement to position from which he was dismissed September 26, 1933, with pay for all time lost."

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that—

The Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act as approved June 21, 1934.

The parties to the dispute were given due notice of a hearing to be conducted "for the purpose of determining the question of the Board's jurisdiction only."

The dispute being deadlocked, William H. Spencer was called in as Referee to sit with the Third Division as a member thereof.

From October 1, 1920, until June 21, 1934, there was in operation a "Plan of Employee Representation for District Employees" of all classes of employees in the service of The Pullman Company.

The Plan established machinery and procedures for the settlement of grievances of employees. The procedures are briefly summarized in a statement of Mr. E. F. Carry, President of the Company, published January 1, 1927:

"Every district employee has the right to present his contention on any question growing out of grievances, existing practices, or the interpretation or application of agreements, to his immediate supervisory officer, and, failing satisfactory adjustment, he may appeal his case to his Local Committee, and thence, if he desires, to his Zone General Committee; and, failing satisfactory adjustment, to the Bureau of Industrial Relations, consisting of an equal number of management and employee representatives, for final decision."

The Plan provided for equal representation of management and of employees on the joint committees as well as in the Bureau of Industrial Relations. Article 3 of the Plan set forth in detail the manner in which employees were permitted by secret ballot to select their representatives. Articles 4 and 5 outlined the procedures for the presentation and settlement of grievances of employees.

Section 2 of The Railway Labor Act of 1926 states, among other things, that "it shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, * * *." Section 2 provides that "boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees." This section sets forth the essential provisions of the agreements creating adjustment boards. Among the essential provisions, Section 3 (e) states that the agreement "shall stipulate that decisions of adjustment boards shall be final and binding on both parties to the dispute; and it shall be the duty of both to abide by such decisions." Section 3 concludes with the provision that "nothing in this Act shall be construed to prohibit an individual carrier and its employees from agreeing upon the settlement of disputes through such machinery of contract and adjustment as they may mutually establish."

Following the enactment of the Railway Labor Act of 1926, the Plan of Employee Representation was revised, effective January 1, 1927, with a view of constituting the Bureau of Industrial Relations, an adjustment board within the meaning of the Railway Labor Act. Following the revisions in the Plan,

the Bureau drew up and adopted rules of procedure which in Section 5 (b) provided that its decisions "shall be final and binding on both parties to the dispute and it shall be the duty of both to abide by such decisions."

On May 24, 1926, a representative of the Order of Sleeping Car Conductors requested the Pullman Company to confer with him with a view of creating an adjustment board under the Railway Labor Act for the settlement of grievances arising between sleeping car conductors and the management. After an exchange of correspondence, the Pullman Company proposed the enlargement of its Bureau of Industrial Relations as an adjustment board for all employees, with the understanding that the conductors should elect one representative to the board. This proposal was not satisfactory to the Order of Sleeping Car Conductors. On December 15, through the intervention of the National Board of Mediation, representatives of The Pullman Company and representatives of the Order of Sleeping Car Conductors entered into an agreement, to become effective January 1, 1927, "for the establishment of an adjustment board pursuant to Section 3 of the Railway Labor Act."

On September 26, 1933, the Pullman Company dismissed Conductor J. W. Bringolf, complainant in the present controversy, for alleged cause. Although a member of the Order of Sleeping Car Conductors, Bringolf, after having failed to get an adjustment of his grievance by application to the appropriate operating officials of the company, chose to rest his grievance with the Employee Representation Plan. The Local Committee, to which the controversy went in the first instance, was unable to reach a decision. The Zone General Committee, to which appeal was made, unanimously recommended that the petitioner be reinstated. On December 21, 1933, a representative of the management notified Conductor Bringolf that, the recommendation of the Zone General Committee to the contrary notwithstanding, the company could not reinstate him. Thereafter Conductor Bringolf appealed to the Bureau of Industrial Relations. On January 10, 1934, the Bureau communicated this decision to Conductor Bringolf:

"After considering all of the written evidence and oral testimony presented, the members of the Bureau have decided that in view of the obligations of The Pullman Company to the traveling public it would not be safe or proper to reinstate Conductor Bringolf in service as a conductor, and his petition is therefore denied."

This decision, however, contained this additional statement:

"This recommendation (the recommendation of the Zone General Committee that the petitioner be reinstated) was referred to Mr. B. H. Vroman, Assistant to General Manager, who, after reviewing the evidence and considering the recommendation of the Zone General Committee, stated that he could not see his way clear to adopt the recommendation of the General Committee or set aside the action taken by the Management or authorize the reinstatement of Mr. Bringolf."

Following this decision, Conductor Bringolf appealed to the Order of Sleeping Car Conductors for assistance. Representatives of the Order, failing in their efforts to secure a voluntary adjustment of the alleged grievance, filed an ex parte statement of facts on behalf of Conductor Bringolf with the Third Division of the National Railroad Adjustment Board, asking for his reinstatement and back pay.

CONTENTION OF CARRIER.—The carrier contends that the Bureau of Industrial Relations as revised constituted an adjustment board meeting the requirements of Section 3 of the Railway Labor Act of 1926; and Conductor Bringolf voluntarily elected to present his alleged grievance through the Bureau; that the Bureau rendered a final decision denying his petition; that under its rules of procedure this decision was final and binding upon both parties; and that, therefore, this controversy is not a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act, approved June 21, 1934.

CONTENTION OF EMPLOYEE.—The employee contended that the Bureau of Industrial Relations was not legally set up; that, even if legally set up, it did not qualify as an adjustment board under Section 2 and 3 of the Railway Labor Act of 1926; that, if properly set up as an adjustment board, it did not follow its own procedures in passing judgment on his complaint; and that for the reasons given the dispute is still a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act of 1934.

CONCLUSIONS OF THE THIRD DIVISION.—It is the conclusion of the Division that the grievance of Conductor Bringolf is a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act of June 21, 1934, and that the Division has jurisdiction to hear the complaint on its merits.

While the Board should be cautious in the assertion of its jurisdiction, it should not be so cautious as to impair its usefulness in the settlement of disputes. Certainly in genuinely doubtful cases, the Board should resolve the doubt in favor of the petitioner. If in this case, for instance, the Board should refuse to assume jurisdiction over Conductor Bringolf's complaint, Bringolf under the Railway Labor Act of 1934 would have no recourse to courts with a view of getting a decision as to the correctness of the Division's interpretation of what constitutes a "pending and unadjusted" case. On the other hand, if the Division entertains jurisdiction over this dispute and renders an award in favor of the petitioner, the carrier can readily secure judicial review of the correctness of the Board's decision.

There is genuine doubt whether the Bureau of Industrial Relations, as revised following the enactment of the Railway Labor Act of 1926, complied with the spirit or letter of Sections 2 and 3 of the Act as an adjustment board. For the purpose of this decision, however, it may be assumed that the Bureau was a *de facto*, if not a legally constituted, adjustment board. To this organization, Conductor Bringolf, for reasons good or bad, voluntarily chose to present his grievance. On the assumption that the Bureau was a *de jure* or *de facto* adjustment board, Bringolf should not now, except for good cause, be permitted to reopen the controversy before the National Railroad Adjustment Board. The Division, however, is of the opinion that the petitioner has shown good cause why his grievance should be reheard on its merits.

When Bringolf elected to rest his case with the Employee Representation Plan, it was on condition that the hearing should be conducted in accordance with the letter and spirit of the Plan and its Procedure. Neither the Plan nor its Procedures contemplated, expressly or by implication, that the management would interfere with the hearing on a grievance while it was passing through the joint committees to the Bureau of Industrial Relations. In this case, however, the management, following a unanimous recommendation of the Zone General Committee that the petitioner be reinstated, bluntly announced that it had reviewed the evidence and could not reinstate him. At this juncture, the management, if dissatisfied with the recommendation, might itself have appealed to the Bureau of Industrial Relations. Although it is arguable that the management had the right to disregard the recommendation of the Zone General Committee, it did not stop at this point in the exertion of influence over the hearing of the controversy. The decision of the Bureau of Industrial Relations, to which the petitioner finally appealed, carried the statement that the management had reviewed the evidence and could not reinstate Conductor Bringolf.

In these circumstances, it is the opinion of the Third Division that the complaint of Conductor Bringolf is a "pending and unadjusted" case within the meaning of the Amended Railway Labor Act of 1934.

AWARD

Let the complaint of the petitioner be heard on its merits.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 2nd day of January 1936.