Award No. 6035

Docket No. CL-6070

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS, FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Carrier violated the Employes' Wage Agreement dated March 1, 1951, effective February 1, 1951:

(a) That Carrier has not properly applied provisions of Agreement dated Washington, D. C., March 1, 1951, by and between the participating Carriers, one of which was the St. Louis Southwestern Railway Lines, represented by its Conference Committee, and its employes, represented by the Brotherhood of Railway Clerks etc., operating through the Employes' National Conference Committee, Fifteen Cooperating Railway Labor Organizations, by declining to place into effect the increase in rates of pay therein provided for to employes occupying positions tabulated in Exception "B" of Rule 1 of our General Rules Agreement with the Carrier, effective April 1, 1946;

(b) That Carrier now be required by an appropriate order from your Board to properly apply the provisions of this Agreement.

EMPLOYES' STATEMENT OF FACTS: On October 25, 1950 the Employes served formal notice on the Carrier in accordance with the provisions of Section 6 of the Railway Labor Act as amended, reading in part as follows:

"Please accept this as formal notice, served in accordance with the procedures of the Railway Labor Act on behalf of all employes we represent, of our desire to change and increase all existing rates of pay by the addition thereto of twenty-five (25) cents per hour, effective November 25, 1950, this increase to be applied to all types of rates so as to give effect to the requested increase of twenty-five (25) cents per hour."

The first conference in connection with this notice was held between the Employes and the Carrier at 2:00 P. M., on Friday, November 10, 1950, as

(169⅓ x 12½). This would arbitrarily and without reason increase the differential between different positions.

The increase of $25.00 a month given was fair, and no greater increase could be justified.

X

In conclusion the Carrier submits that the change the Organization is requesting is just as definitely a change in rules as if words were added to the first paragraph of Exception B, Rule 1, to the effect that such positions would also be subject to any general wage adjustments applied to other employes and that rates must be maintained at the level resulting from such adjustment.

The claim is not supported by the rules, as pointed out above. It is contrary to the rules and is entirely without merit, and the Carrier respectfully requests that it be denied.

All data herein has been presented to representatives of the Employes.

(Exhibits not reproduced).

OPINION OF BOARD: Decision herein is governed by our Award No. 6034.

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 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 12th day of January, 1953.

DISSENT TO AWARDS 6034 AND 6035, DOCKETS CL-6047 AND CL-6070

This case involved the simple question of whether certain clerical positions which were specifically excluded from the wage provisions of the contract between the Carrier and the Brotherhood shall be made the beneficiaries of a wage increase agreement by a construction of the authority given to the Carrier's agent to negotiate a wage increase for the craft. A logical consideration of the contract rights of the parties and the law would

have been that because these positions are specifically excluded from the wage provisions of the working agreement, they cannot be injected into the wage negotiations between the Brotherhood and the agent of the Carrier when the latter was empowered only to deal in a manner "co-extensive with the provisions of current schedule agreements." That is true, irrespective of this Award, because the specific exceptions in the working agreement were not changed by the wage settlement agreement and the authority of the Carrier's agent was expressly limited to the terms of the working agreement.

This Award is predicated upon a revision of language authorizing the Western Carriers Conference Committee, as agent, to enter into a proceeding in 1947. But that was an arbitration proceeding and as such was of an entirely different character from the 1951 negotiations. The fact that it is found a change was made by the Carrier's agent in the 1947 proceeding is not only assumed now to have broadened the agent's power then, but assumption is laid upon assumption and the revised language of the agent's authority in 1947 is construed as broadening his authority in an entirely different proceeding of a thoroughly dissimilar character some four years later.

In order to legally substantiate this Award, there must have been a finding that the principal enlarged the agent's authority to accommodate the positions in question. There is no such finding and there was no such fact. Therefore, the Award is wrong.

The case employs the rule of construction that ambiguous language must be construed most strongly against the one who wrote it, but the majority has overlooked the well settled principle of law that "Under no circumstances should construction be used as a device to enlarge the authority beyond the powers expressly given." (2 C.J.S. 1220.) It is equally well settled as a matter of law that it is the act of the principal rather than the agent which is looked to in determining its legal nature. (1 Mechem on Agency, Section 285.) Here there is no finding whatever as to any act of the principal tending to broaden the power of his agent beyond the stated limitation.

The simple statement of the agent's authority which was made a part of the record of the 1951 proceeding, i.e., "Authorization is co-extensive with the provisions of current schedule agreements applicable to the employes represented by the organizations listed above" is not at all equivocal. It was base error for this Board to construe this clear language by a reference to some other language in an entirely different character of proceeding four years previously. The law has long been that where the power of authorization of an agent is in writing, parol evidence will not be admitted to vary the terms. (1 Mechem on Agency, Section 975.) Here parol evidence was not only admitted but was held to be the controlling evidenciary matter in the entire case.

Because of the foregoing reasons, we dissent.

/s/ E. T. HORSLEY

/s/ R. M. BUTLER

/s/ W. H. CASTLE

/s/ C. P. DUGAN

/s/ J. E. KEMP