Award No. 9254
Docket No. CL-8630

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Harold M. Weston, Referee

PARTIES TO DISPUTE:

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

LEHIGH VALLEY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that the Lehigh Valley Railroad violated the Clerks' Agreement:

(1) When it assigned the clerical work to Clerk-Telegrapher at Rochester, New York, an employe without seniority under the Clerks' Agreement.

(2) That position of Cashier at Rochester Freight Station, Rochester, N. Y. abolished March 13, 1950, be restored.

(3) That clerical employes McCowan, Frank Tuttle, Herbert Tuttle and Quinlan and/or their successors be compensated for two (2) hours at time and one-half from March 13, 1950 and each working date thereafter until the condition is corrected.

EMPLOYES' STATEMENT OF FACTS: This is a resubmission of dispute originally submitted to your Board on November 3, 1952, covered by Docket CL 6520. On February 11, 1954, in Award 6485, the following Opinion, Findings and Award were issued:

OPINION OF THE BOARD: This claim is opposed by the Carrier on the first ground that no notice of the hearings of this Division has been given a third part "involved" in the claim.

Section 3 First (j) of the Railway Labor Act requires:

". . . the several Divisions of the Adjustment Board shall give due notice of all hearings to the employe or employes and the carrier or carriers involved in any disputes submitted to them."

The question presented is identical with that raised and decided in Award No. 6482. The same reasoning, opinion, findings and award expressed therein are repeated and re-stated as our opinion in the present docket.

would there be a settlement of disputes under this sort of regime? Was this sort of inconstancy and obstructionist tactics, permissible under this statute ostensibly enacted for expeditious settlement of disputes? Should we construe the Act as giving to one party a veto over the Board's appointment of the Referee? And worse still, may the party withhold the exercise of its veto until it learns how it will fare with said referee? To give such a construction to the Act, and to the relief which its enforcement demands, is to nullify and defeat the plain purpose of the Act. It is to give effect to efforts which are lacking in good faith, good sportsmanship, and good conscience.

* * * * *

"We can see but one answer—**a dispute once submitted and heard, may not be withdrawn, to be resubmitted for another try.**" (Emphasis added.)

What was held in that case in regard to a dispute which had been submitted, heard, and withdrawn, applies with even more force when the dispute has not only been submitted and heard but an award has been rendered thereon which, under the specific requirements of the Railway Labor Act is **"final and binding upon both parties to the dispute."**

The Carrier urges that in consequence of the indispensability of the Telegraphers' Organization to a just determination in the case herein and the consequent duty to bring them in as a party, this controversy between the Clerks and Telegraphers as to the right to the jobs in question becomes justiciable and that the Third Division now lacks jurisdiction in determining the merits of such controversy on account of the lack of indispensable parties, to wit, the Telegraphers.

OPINION OF BOARD: It is undisputed that the claim before us is a resubmission of the identical dispute that was dismissed "without prejudice" by this Division on February 11, 1954 in Award 6485.

The Carrier maintains that Award 6485 constitutes a final and binding disposition of the dispute and that the words "without prejudice" do not permit the identical claim to be passed upon a second time by the Board. The point has been ruled upon by the Board and there is no question but that its awards support the Carrier's contention. See Award 9025 of this Division and Interpretation No. 1 to Award No. 1740 of the Second Division. While this Referee considers the use of the words "without prejudice" unfortunate if they were intended to convey the meaning urged by Carrier, he is inclined to follow precedent on the point in issue, particularly in view of the Railway Labor Act's requirement that where no money award is concerned, as in the present case, the Board's "awards shall be final and binding upon both parties to the dispute."

It is accordingly our opinion that the Board has no jurisdiction over the claim before us in view of Award 6485.

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; and

That the claim is improperly before the Board.

AWARD

Claim dismissed as per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 26th day of February, 1960.