Award No. 10702
Docket No. CL-10417

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

CENTRAL OF GEORGIA RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, that,

(1) The Carrier violated the Rules of the Clerks' Agreement when beginning around December 26, 1956 it arbitrarily and unilaterally without conference or agreement removed work from Crew Dispatcher's performance at Columbus, Georgia Yard Office and transferred it to Yardmaster's performance, such Yardmasters being located in a tower built above the Freight Agency and located approximately 200 yards from the Columbus, Georgia Yard Office, and that therefore,

(2) Crew Dispatchers J. A. Brady for first trick; J. L. Patrick for second trick; R. D. Gibson for third trick; C. J. Alford, Relief Clerk; J. F. Durham, Relief Clerk; A. T. Attaway, Relief Clerk, and/or their successor or successors, if any, shall now be paid one (1) day's pay for each of the five (5) days on the regular assignment of Crew Dispatchers and two (2) days' pay for each of the relief assignments retroactive to May 5, 1957 at rate of $399.92 per month (plus such cost-of-living adjustment as may be in effect), this claim to continue in effect until all of this work is restored to Crew Dispatchers' performance.

EMPLOYES' STATEMENT OF FACTS: Under date of March 19, 1957, the Vice-General Chairman at Columbus, Georgia, Mr. R. D. Gibson, directed a letter to Superintendent W. L. Ector calling that officer's attention to the fact that work which had heretofore been performed by Crew Dispatchers in the Yard Office at Columbus, Georgia had been transferred to Yardmasters who were employed in the tower located above the Freight Agency some 200 yards from the Yard Office and requested Mr. Ector to make correction. Copy of this letter which is self-explanatory is hereto attached and identified as Employes' Exhibit No. 1.

Shortly after receipt of the above letter, the Vice-General Chairman and the General Chairman held an informal discussion with Mr. Ector and out-

radio someone and repeat to them the message from the Yardmaster. Actually, the work formerly performed by the clerks has been eliminated, as was mutually agreed upon between the parties in conference on the property on November 18, 21, 22, 1957, as Carrier's conference notes show. They also show General Chairman Clegg agreed that this "work" did not belong exclusively to clerks.

Carrier ironed out all the kinks within a very few days after the new Tower operation went into effect January 30, 1957. **There is no basis for any claim whatsover beginning May 5, 1957, as the Employes now demand. There is no rule violation whatsoever.** The claim should be denied in its entirety, and Carrier so urges.

All data herein submitted have been presented to the duly authorized representatives of the Employes and are made a part of the particular question in dispute.

The Carrier reserves the right, if and when it is furnished with the submission which has been or will be filed ex parte by the Employes in this case, to make such further answer as may be necessary in relation to all allegations and claims as may be advanced by the Employes in such submission, which cannot be forecast by the Carrier at this time and have not been answered in this, the Carrier's initial submission.

(Exhibits not reproduced.)

OPINION OF BOARD: It appears, herein, that for a number of years both Crew Dispatchers and the Yardmaster operated from a Yardmaster's office on the property at Columbus, Georgia. In the year 1956, a Yardmaster's tower was erected about 200 feet from the office formerly occupied by the Yardmaster before moving to the tower. It is the contention of the Organization that, on or about December 1956, the Carrier removed work from the Crew Dispatcher's performance and transferred it to the Yardmaster's performance. On or about March 19, 1957, a claim of violation of the Agreement was directed to the Superintendent.

After this submission to the Superintendent a number of conferences were held between the Organization and the Carrier which led to a conference on September 13, 1957, at which it was mutually agreed that there would be a joint check on the work involved in the controversy. This check was made and the Director of Personnel of the Carrier notified of the results.

Later the General Chairman of the Brotherhood requested a further conference for the purpose of analyzing the joint check. A conference was held on November 18, 21 and 22, 1957 which was suspended by mutual Agreement until such time as either party notified the other of a desire to resume the discussion in conference. The General Chairman subsequently requested a resumption of the discussion and a conference was held between the Organization and the Carrier on January 23 and 24, 1958. A copy of the Agreement was reduced to writing by the Carrier, unsigned, which read, as follows:

"DECISION

"It was mutually agreed that when the yardmaster was transferred to the tower there initially existed a violation of the Clerks' Agreement; however, this has been corrected and the Management will see that the yardmasters perform their work as such, and no infringements will be made upon the duties properly assignable to clerks.

"In view thereof the claim is withdrawn in its entirety by the Clerks' Committee."

This written Memorandum of the conference was mailed to the General Chairman on January 27, 1958, and he responded to it on January 30, 1958 with a letter containing the following language:

"The Minutes appear to be entirely accurate and complete with the exception that in connection with Docket CL 5820, File CL 1131, second paragraph thereof reading: 'In view thereof the claim is withdrawn in its entirety by the Clerks' Committee,' is in error. We did not withdraw this claim but we did say to you that if the correction were made as outlined in the first paragraph, then we would undertake to secure withdrawal. Please have this portion of the decision corrected."

On January 31, 1958, the Director of Personnel addressed the following letter to the General Chairman, in part:

"There was certainly no misunderstanding as you allege, because the claim was in fact discussed for one-half day, and the majority of the time was spent in putting down language that was agreeable to both you and the undersigned. The Memorandum of Conference sent you is exactly what was agreed upon in conference, and, needless to say, I would not have put the language in the first paragraph had not you agreed as you did to withdraw the claim."

and again on May 7, 1958, addressed in a letter the following:

"There was certainly no misunderstanding as you allege, because after you agreed to withdraw the claim in conference January 23-24, Mr. Ferrell asked you how you desired the decision written, and you largely dictated the decision as shown in the Memorandum of Conference of January 23-24, 1958.

"I must insist that you live up to the decision mutually written and agreed to in conference."

It is the Carrier's position that by the mutual Agreement of the parties the claim of the Petitioner's was withdrawn on January 23 and January 24, 1958, and consequently this claim has been adjusted.

The Petitioner urges that the alleged Agreement of January 23 and 24, 1958, was at best an oral Agreement of which the written memorandum was not a true and correct copy, and that it was unsigned and not binding on the parties.

Rule 23 of the Agreement, effective December 1, 1956, is, as follows:

"RULE 23—RULINGS

"General rulings or interpretations will not be made on this agreement except in conference between the Director of Personnel and General Chairman and will not be binding until reduced to writing."

It is significant that the Agreement to hold a joint check on the property and the Agreement that discussion on analysis of the joint check could be

delayed until either party should notify the other of a desire to resume the discussion were both reduced to writing the memorandum unsigned by the parties, but the Agreements in each instance were observed by the parties. Further there is no denial in the record of Carrier's claim that the General Chairman largely dictated the decision evidenced in the written Memorandum of the Conference of January 23 and January 24.

We must conclude in view of all the circumstances appearing in the record there was a bi-lateral Agreement between the Organization and the Carrier and the foregoing claim was withdrawn by the Petitioner on January 23 and 24, 1958, and further, is not an unadjusted dispute within the meaning of Section 3, First (L) of the Railway Labor Act. We cannot, here, properly consider it.

The Decision herein, however, is without prejudice to the Petitioner to pursue further claims against the Carrier, if there have been infringements subsequent to January 24, 1958, on duties properly assigned to Clerks under the Agreement.

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 Claim was withdrawn by Organization.

AWARD

Claim dismissed in compliance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of July, 1962.

LABOR MEMBER'S DISSENT TO AWARD 10702 (Docket CL-10417)

The Referee has erred in his Opinion in Award 10702.

Particular attention is directed to the salient features of the Opinion which reads as follows:

> " * * * The General Chairman subsequently requested a resumption of the discussion and a conference was held between the Organization and the Carrier on January 23 and 24, 1958. A copy of the Agreement was reduced to writing by the Carrier, unsigned, which read, as follows:

'DECISION

'It was mutually agreed that when the yardmaster was transferred to the tower there initially existed a violation of the Clerks' Agreement; however, this has been corrected and the Management will see that the yardmasters perform their work as such, and no infringements will be made upon the duties properly assignable to clerks.

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"and again on May 7, 1958, addressed in a letter the following:

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'I must insist that you live up to the decision mutually written and agreed to in conference.'

"It is the Carrier's position that by the mutual Agreement of the parties the claim of the Petitioner's was withdrawn on January 23 and January 24, 1958, and consequently this claim has been adjusted.

The Petitioner urges that the alleged Agreement of January 23 and 24, 1958, was at best an oral Agreement of which the written memorandum was not a true and correct copy, that it was unsigned and not binding on the parties.

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"It is significant that the Agreement to hold a joint check on the property and the Agreement that discussion on analysis of the joint check could be delayed until either party should notify the other of a desire to resume the discussion were both reduced to writing the memorandum unsigned by the parties, but the Agreements in each instance were observed by the parties. Further there is no denial in the record of Carrier's claim that the General Chairman largely dictated the decision evidenced in the written Memorandum of the Conference of January 23 and January 24.

We must conclude in view of all the circumstances appearing in the record there was a bi-lateral Agreement between the Organization and the Carrier and the foregoing claim was withdrawn by the Petitioner on January 23 and 24, 1958, and further, is not an unadjusted dispute within the meaning of Section 3, First (L) of the Railway Labor Act. We cannot, here, properly consider it."

In his Findings, the Referee holds "That claim was withdrawn by Organization" and his erroneous Award reads "Claim dismissed in compliance with the Opinion".

From the above, it is quite apparent that the Referee accepted as a binding, "bi-lateral agreement" the minutes of the conference which were prepared by the Carrier and lacked appropriate signatures. He then uses Rule 23, "Rulings", in a vain attempt to bolster a meaningless opinion. The provisions of Rule 23 couldn't be further from the issue in point.

Rule 23 is concise, clear and unambiguous. The Rule definitely refers to "rulings" under the agreement and the interpretations placed on the rules by the parties. It has nothing to do with notes prepared by the Carrier after a conference had been had on disputes.

Anyone acquainted with collective bargaining and its basic principles under the Railway Labor Act knows that what happened back on the property between the parties in this particular case is not unusual. It is quite evident from the record that the General Chairman accepted the Carrier's statement at its face value in conference that the clerical work had been removed from the yardmasters and returned to the Clerk's Agreement to be performed by employes within its scope, and, accepting that fact, tentatively agreed to withdraw such claim.

The file reveals that such withdrawal was conditioned on whether or not the work was returned to the Scope and operation of the Clerk's Agreement. When the facts were developed, it was found that all of the work had not been returned as the General Chairman had understood it would be, and he promptly advised the Carrier of his change of opinion, which is not uncommon or unethical in collective bargaining under the Railway Labor Act.

Tentative agreement is a genuine step in collective bargaining; it is a halfway point, a progressing period, between the point of total disagreement and the point of firm and permanent agreement reduced to writing over the signatures of the parties. The tentative agreement did not result in a permanent agreement in this particular instance.

The decision is unfair, unjust, and wholly erroneous in that it does not reflect the factual contents of record.

For the above reasons, I must dissent.

C. E. Kief, Labor Member

August 6, 1962

CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S DISSENT TO AWARD 10702, DOCKET CL-10417

The majority's decision in this case was that the claim was withdrawn by the Organization (General Chairman) on the property.

The Dissenter asserts:

> " * * * it is quite apparent that the Referee accepted as a binding, 'bi-lateral agreement' the minutes of the conference which were prepared by the Carrier and lacked appropriate signatures. * * * "

The Dissenter entirely ignores the unchallenged evidence in the record that the General Chairman "largely dictated the decision as shown in the Memorandum of Conference of January 23-24, 1958". He also ignores the undeniable fact that signatures are not necessary to finalize and enforce an oral agreement. Moreover, he disregards the fact that it was the usual practice to handle mutual understandings in this fashion as evidenced by the "agreement" to hold a joint check and the "agreement" to suspend discussion of the case until either party notified the other of its resumption. In neither case was the oral understanding reduced to writing and signed by the parties, yet in both instances, the Agreements were honored, without a question as to their binding effect.

The Dissenter continues:

> "Anyone acquainted with collective bargaining and its basic principles under the Railway Labor Act knows that what happened back on the property between the parties in this particular case is not unusual. * * * "

This is precisely the point. As we have just shown it is not unusual to make oral understandings or agreements and expect both sides to live up to whatever commitments they make as consideration for the understanding without the necessity of both parties signing the Agreement. If it were required that both parties sign the understanding before it becomes effective, it would have been spelled out in Rule 23, which incidentally, was a rule referred to and relied upon by the Organization—not the Carrier, contrary to the impression you obtain from the Dissent.

Finally, the Dissenter remarks:

> "The file reveals that such withdrawal was conditioned on whether

or not the work was returned to the Scope and operation of the Clerk's Agreement. * * * "

This is **not** a fact. The letter reproduced in the award said in the **first** paragraph:

"It was mutually agreed that when the yardmaster was transferred to the tower there initially existed a violation of the Clerks' Agreement; **however, this has** been corrected . . . " (Emphasis ours).

The General Chairman replied:

"The Minutes appear to be entirely accurate and complete with the exception . . . **second paragraph.** . . . " (Emphasis ours).

In short, the General Chairman unequivocally agreed that the condition "has been corrected" and therefore there was no reason for him to condition his withdrawal upon the correction of a condition which he had already agreed was corrected. The record does not reveal that his withdrawal was conditioned upon any future action by the Carrier to correct the condition, but rather, his letter of January 30, 1958 admits the condition was corrected. These are facts not capable of dispute because they are taken from the record and are reproduced in the Award for the scrutiny of all who are interested in reaching a proper conclusion.

W. F. Euker

R. E. Black

R. A. DeRossett

G. L. Naylor

O. B. Sayers