

Award No. 10939

Docket No. TE-9694

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Donald F. McMahon, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

(1) The Carrier violated the Agreement between the parties, when, at 7:40 P.M., May 19, 1956, it required or permitted a Signal Maintainer, an employe not covered by the Agreement at Orrick, Mo., outside the assigned hours of the Agent-Telegrapher at this station, to copy a train lineup by telephone direct from the train dispatcher.

(2) The Carrier shall, because of such violation, pay E. W. Miller, the regular assigned Agent-Telegrapher at Orrick, Mo., a call under the provisions of Rule 5(b).

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as revised.

E. W. Miller, Claimant, is the regularly assigned Agent-Telegrapher at Orrick, Missouri. His assigned hours, 7 A.M. to 4 P.M., Monday through Friday, Saturday and Sunday rest days. At or about 7:40 P.M. on Saturday, May 19, 1956, F. E. Curry, Signal Maintainer while at Orrick, copied a train lineup direct from the train dispatcher over the telephone. The lineup reads as follows:

“No. 9 on time

No. 98 called 815 PM

Extra West called 9 PM

No. 91 about ready to leave Moberly

The record indicates, that Claimant Miller was available, ready and willing to perform the work, but was not called.

Claimant submitted a time-slip. ORT Exhibit 1.

The Employes' representatives have never asked to or indicated they desired to discuss this case in conference. It has not been discussed in conference between the representatives of the parties.

(Exhibits not reproduced.)

OPINION OF BOARD: The Carrier herein contends that neither the named Employee nor his representatives have properly lodged the claim as made here before this Division, for the reason that no conferences have been held between the parties on the property. That by reason of such failure to properly progress this docket, this Board has no jurisdiction, to hear such claim, nor to make an award on the merits of such.

Carrier relies strictly on the provisions of The Railway Labor Act, as amended.

Title I, Section 2, provides, under "General Purposes", of all disputes concerning rates of pay, rules, or working conditions; (5) provides for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of Agreements covering rates of pay, rules or working conditions.

Under Section 2, Second, provides that all disputes between a Carrier or Carriers and its or their Employes shall be considered, and, if possible, decided, with all expedition, in **conference** between representatives designated and authorized so to confer, respectively, by the Carrier or Carriers, and by the Employes thereof interested in the dispute. In addition Carrier relies upon the provisions of Circular No. 1, National Railroad Adjustment Board in that the Organization and the Employee have failed to comply with the provisions of The Railway Labor Act, as above stated in the foregoing paragraphs.

The record here before us is silent on any showing that the Petitioners or either of them made any request of Carrier to have a conference on the subject matter of the pending. Such failure to request a conference, as is evident from the record, that neither of the Petitioners desired a conference. Carrier certainly was under no obligation to propose a conference, and we find no such requirement in any of the cases cited to us by the parties.

The Railway Labor Act, is clear and concise in the provisions referred to. It clearly provides the manner in which grievances may be progressed to the National Railroad Adjustment Board. All the Divisions of the Adjustment Board have ruled upon the jurisdictional question as involved here. In many cases the Divisions have ruled, without a Referee, that the Divisions must require a strict compliance with the provisions of The Railway Labor Act, before a Division can accept jurisdiction, to enable it to make a proper award on the merits.

We are of the opinion that neither the Employee nor his Organization have complied with the provisions of The Railway Labor Act, or Circular No. 1 of the Adjustment Board, for reasons as stated, that the Board here does not have jurisdiction as required, to permit a consideration of the subject matter of the claim, and the docket here requires a dismissal by this Division, on jurisdictional grounds.

No consideration, has been given, as to merits of the claim before us.

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

That this Division of the Adjustment Board does not have jurisdiction over the dispute involved herein; and

The claim must be dismissed for want of jurisdiction.

AWARD

Dismissed per Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.