Award No. 11639
Docket No. SG-11110

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Great Northern Railway Company that:

(a) The Carrier violated, and continues to violate, the current Signalmen's Agreement, as amended, especially Rules 2 and 49, when it failed and/or declined to apply the General C.T.C. Rate of Pay to the signal maintenance position at New Westminster, B. C., after it had placed Centralized Traffic Control into service at New Westminster on January 15, 1958.

(b) The Carrier should now be required to apply the General C.T.C. Maintainer Rate of Pay to the signal maintenance position at New Westminster, effective January 15, 1958, to the regular assignee of that position, as well as to any other signal employe assigned to protect that position. [Carrier's File: S-5]

EMPLOYES' STATEMENT OF FACTS: This Carrier has a signal maintenance position with headquarters at New Westminster, B.C. On January 15, 1958, the Carrier placed a Centralized Traffic Control system in operation on the New Westminster signal maintenance territory. The control panel and the C.T.C. machine are located at New Westminster. This C.T.C. installation includes 1 power switch at Endot, 2 power switches at Brownsville, and 8 electric switch locks at New Westminster. The signals at both ends of Brownsville and at Endot are controlled from the control panel.

In as much as the Carrier failed to apply the General C.T.C. Maintainer Rate of Pay to the New Westminster signal maintenance position after the C.T.C. was placed in service on that territory, **Local Chairman Jonas Steinberg** presented the following claim to **Supervisor, Signals, F. J. Murphy** on **February 18, 1958:**

"With the completion of C. T. C. installation, and now in service at New Westminster, B. C. utilizing coding apparatus. According to

3. There is no rule or agreement in existence between the parties to this dispute to support the Organization's contention that the General C.T.C. Maintainer's rate of pay should be applied to any other signal employe while assigned to stand-by for protection of the New Westminster Signal Maintainer's district.

4. Past practice on this property with respect to classification of maintenance employes on all other C.T.C. installations clearly indicate that the Signal Maintainer's position at New Westminster, B.C. does not meet the agreed to qualifications of Schedule Rule 2 for application of the General C.T.C. Maintainer's rate differential.

For the foregoing reasons, Carrier respectfully requests that the claim of the employes be denied.

All the evidence and data contained herein has been presented to the duly authorized representatives of the employes.

(Exhibits not reproduced.)

OPINION OF BOARD: Brotherhood of Railroad Signalmen of America, herein called Petitioner, and Great Northern Railway Company, herein called Respondent, did, on September 15, 1957 at St. Paul, Minnesota in the United States of America, execute a collective bargaining agreement, system wide in scope, covering Signal Department Employes rates of pay, rules and working conditions. The Agreement by its terms became effective October 1, 1957. It was in force and effect when the Claim before us was filed. This Division of the Board has been petitioned to interpret and apply the provisions of the Agreement pertinent to the Claim.

I

THE ISSUES

On the merits the issue is whether Respondent violated the Agreement in failing and refusing to change the classification of a position from "Signal maintainer" to "General C.T.C. Maintainer," which latter classification carries with it a higher rate of pay. The employe assigned to the position has his headquarters in New Westminster, British Columbia, Dominion of Canada; and, all the duties of the position are performed on 25.3 miles of Respondent's system wholly within the Dominion of Canada.

We have before us what is in effect a motion by Respondent to dismiss for lack of jurisdiction. The argument, advanced by Respondent, is that this Board has no jurisdiction to interpret and apply the Agreement relative to an alleged violation of its terms in the classification of a position fully performed in the Dominion of Canada, herein called Canada. Only if we deny the motion can we consider the merits.

Petitioner pleads that Respondent did not raise, timely, the issue of jurisdiction in that it did not raise it on the property. We find, in accordance with established legal precepts, that the question of jurisdiction may be raised at anytime during the course of the proceedings.

When, as here, a party questions this Board's jurisdiction, the Board, perforce, must pass upon the issue in the first instance. A party of the

opinion that he has been wronged by an assertion of jurisdiction by a statutory body has recourse to the courts. The ultimate decision is reserved to the courts.

II

THE JURISDICTIONAL ISSUE

A. The Collective Bargaining Agreement.

The Agreement, as stated above, is system wide. It does not differentiate employes whose positions are located in Canada from those in the United States.

The Agreement vests, in the holder of the position here involved, seniority and promotional rights to positions, on the system, located in the United States (Rule 5(a)(3) and Articles IV and V). Employes holding positions in the United States have the same rights relative to positions, on the system, in Canada.

There is no evidence in the record that the collective bargaining unit in the Agreement, within its Scope provision, was imposed upon Respondent by governmental edict.

In resolving the issue we are confined to the record.

The issue, as we see it, is not whether this Division has jurisdiction to entertain a claim relative to the classification of a position in Canada to comply with the terms of the Agreement. It is, instead, whether we have jurisdiction of the subject matter of an agreement which mingles those employed in the United States with those employed in Canada with like contractual rights, system wide.

B. Powers of the Board

The organization, duties and powers of the National Railroad Adjustment Board are prescribed in Section 3 of the Railway Labor Act, herein referred to as RLA.

The Board is composed of four Divisions "independent of one another." Each Division is an independent quasi-judicial body which interprets and applies contracts by authority of RLA Sec. 3, First (i), which reads:

> "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The RLA makes clear that the Divisions are not boards of arbitration or mediators. They may only interpret and apply in being agreements. This can be and is accomplinshed only by adherence to the principles of contract law.

The Divisions have no regulatory or administrative control of the parties in their collective bargaining relationship. They do not define collective bargaining units, designate collective bargaining agents, or have any authority concerning the procedures leading to consummation of agreements embodying rates of pay, rules or working conditions.

Insofar as the Divisions are concerned all of the elements of labor relations are left to the parties. The agreements brought before the Divisions are **fait accompli**. The Divisions cannot enlarge upon or detract from the agreements or impose their sense of equity or their labor relations predilections.

The Divisions have no power to enforce their orders to make their awards effective (RLA Sec. 3, First (p). True, a dismissal award is final and binding upon both parties (RLA Sec. 3, First (m)). However, when a Division issues an order requiring a carrier to remedy a violation of an agreement by payment of a monetary award the Board has no power to enforce it. Only the petitioner or person for whose benefit such order was made has standing to seek compliance by initiation of an action in a District Court of the United States which, in reality, is a trial **de novo** of the issues (RLA Sec. 3, First (m, o, p)) — The findings of the Board are only "prima facie evidence."

C. Legislative Intent

The legislative history of the Railway Labor Act, as a whole, and of Section 3, in particular, is neither revealing nor informative as to the legislative intent with respect to the jurisdictional question raised in this case. The "General Purposes" of the Act is set out in Sec. 2, viz:

> "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; . . . (5) to provide 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."

The term "commerce" is defined in RLA Sec. 1, Fourth as:

> "Fourth. The term 'commerce' means commerce among the several States or between any State, Territory, or the District of Columbia and any foreign nation, or between any Territory or the District of Columbia and any State, or between any Territory and any other Territory, or between any Territory and the District of Columbia, or within any Territory or the District of Columbia, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign nation."

It is to be noted that "The term 'commerce' means commerce . . . between any State . . . and any foreign nation."

Any dispute between the parties here involved, arising from disagreement as to interpretation and application of the Agreement, could lead to

labor strife and unrest among Respondent's employes in the United States who are covered by the Agreement. Such is the potential which the courts have held leads to or tends to lead to interruption of commerce or to the operation of any carrier engaged therein. It is the ill which the Congress sought to cure by enactment of Section 3 of RLA.

We stress the fact that the Agreement before us is system wide. While the germ of alleged violation may have been found in a localized area it contaminates the body as a whole — the body being the system wide collective bargaining unit. The spread of the malignancy augers pitfalls in labor relations equanimity. We must, therefore, view the Agreement, which is system wide — most of the system and employes being located within the United States — in the light of consequences of a dispute, as to its interpretation and application, which may, possibly, lead to disruption of "commerce" as defined in RLA.

The function of each Division of the Board is to interpret agreements between "carrier" and "employe" as those terms are defined in the Act. As an incident to this function a Division has the implied power, in furtherance of the public policy and in compliance with the laws of contract, to order that an employe be made whole for any loss which he may suffer because of a violation.

Whether the particular situation alleged concerns a position, the duties of which are performed in Canada, is of no import where the agreement mingles positions in Canada with those in the United States with coexistent and coextensive system wide employes' rights. The essence is interpretation of the agreement as it applies system wide. It is beyond question that all of Respondents' employes in the United States, within the scope of the Agreement, are vitally concerned; and, it is the duty of the parties to maintain the Agreement (RLA Sec. 2, First).

D. The Law of Contracts

As stated, above, this Board has very limited statutory jurisdiction. It is confined to interpreting and applying legal documents, in force and effect, which memorialize agreements between the parties concerning rates of pay, rules, or working conditions.

Let us now look at the rights of the parties from the view point of the law of contracts.

The following are basic principles of the law of contracts:

1. The law of the jurisdiction in which the contract was entered into is applicable, unless otherwise provided for in the contract;

2. Action on a contract is **in personam**; and

3. A court having jurisdiction over the parties to a contract has jurisdiction over the subject matter.

In the case before us the contract was executed in St. Paul, Minnesota.

Respondent operates in the United States as a "carrier" and Petitioner as a "reperesentative" within the meaning of those terms as defined in RLA

Secs. 1, First and Sixth, respectively. Each is subject to legal process in the United States. In their respective capacities both are subject to the jurisdiction of this Board. And, it is unquestionable that the Agreement, to the extent it covers and affects Respondent's employes in the United States, is subject to the jurisdiction of this Board.

The subject matter of the Agreement contractually binds Petitioner and Respondent and employes within the scope of the Agreement whether the positions held by the employes have their headquarters in the United States or Canada.

Respondent's employes, as detailed, **supra**, have contractual rights to positions on the system the dutics of which are performed either in the United States or Canada. Under the terms of the Agreement these rights are not divisible. A decision by this Board as to whether the position, here involved, merits a classification other than that assigned to it is an interpretaton of the Agreement as it applies system wide. The interpretation is not restricted to the particular position involved. It applies to all like situations on the entire system. The objective of this Board's decisions, as contemplated by RLA, is interpretation and application of an agreement which, for the future guidance of the parties, stands as **stare decisis.**

While it is popular to refer to the Board as quasi-judicial body, as contrasted to a constitutional court, the Board differs in no materially respect from a statutory court of limited jurisdiction. Visualizing the Board as a statutory court no one could be heard to say that it would be without jurisdiction in a case in which the parties were subject to its jurisdiction; and, the subject matter is within the field of its jurisdiction vested by statute. These conditions precedent to the exercise of jurisdiction are both satisfied in this case.

E. Awards of the Divisions.

There is a conflict in prior awards of the Divisions.

The First Division, in Award 915, dismissed a dispute arising in Mexico because the railroads involved were not subject to the Interstate Commerce Act. In Awards 11149, 11150, 11151 (all without referee) it dismissed disputes because they arose in Canada; and, in Award 14082 (Referee Kane) it dismissed a dispute because it arose in Canada.

The Second Division, in Award 3093, assumed jurisdiction over a dispute arising in Canada giving as its "reasons" that: (1) the National Mediation Board has no right to determine jurisdiction of the National Railroad Adjustment Board; and (2) the parties voluntarily agreed to place themselves within the jurisdiction of the Board.

The Third Division, in Award 8693, assumed jurisdiction over a dispute arising in Canada. The "reason" stated was that the carrier waived jurisdiction by failing to raise the question and participating in the proceedings on the merits.

We find no aid to the determination of the issue before us in the cited Awards. Those of the First Division are laconic. The reasons given in the cited Second Division and Third Division Awards are not legally sound, in that: (1) the jurisdiction of the Divisions is vested by statute and cannot

be enlarged or lessened by agreement of the parties; and, (2) the question of jurisdiction may be raised by the parties at any stage of the proceedings — even by a Division on its own motion.

F. Court Decisions.

The parties have not cited, and we have not found, any case in which a constitutional court has passed upon the issue with which we are confronted.

Respondent states in its brief that judicial support of its position is found in three cases, viz., **Air Line Dispatchers Ass'n v. National Mediation Board,** 342 U. S. 849; **Air Line Stewards and Stewardesses Ass'n v. Northwest Airlines, Inc.,** 267 F. 2d 170, cert. den. 361 U. S. 901, and **Air Line Stewards and Stewardesses Ass'n v. Trans World Airlines,** 273 F. 2d 69, cert. den. 362 U. S. 988. We find these cases are inapposite.

The decisions in the three cases pivot upon the mandates of the Railway Labor Act administered and exercised by the National Mediation Board. The issues were: (1) whether employes of a United States carrier, whose jobs are fully performed in a foreign jurisdiction, have the protections of collective bargaining representation and procedures prescribed in the Railway Labor Act; and (2) whether a United States carrier, in dealing with its foreign based employes, must comply with the Railway Labor Act in recognizing a collective bargaining agent and collective bargaining procedures. As to both issues the courts held in the negative upon the predicates that: (1) to hold affirmatively would be an invasion of the sovereignty of a foreign nation; and, (2) the laws of the United States are not to be extraterritorially applied in the absence of specific direction by the Congress. From these holdings Respondent argues that if the National Mediation Board's functions and powers are confined to Federal territory the same is applicable to the National Railroad Adjustment Board since both Boards have their genesis in the Railway Labor Act. We do not agree.

Since the Agreement in this case, insofar as it encompasses positions in Canada, was not entered into by purported compulsion of the laws of the United States, there can be no question of invasion of the sovereignty of Canada; or, extraterritorially imposing the collective bargaining recognition and procedures prescribed in the Railway Labor Act. We emphasize that the Claim arises from an alleged breach of a contract; and, not from a failure to comply with a statute of the United States.

The Congress, in its wisdom, found it necessary to create the National Mediation Board and the National Railroad Adjustment Board, each as a separate and distinct legal entity.

We do not presume to pass upon the jurisdiction and statutory authority of the National Mediation Board; but, it appears that that Board is an administrative agency exercising authority in the collective bargaining relationship between carriers and employes. The National Railroad Adjustment Board, on the other hand, is strictly an adjudicatory body — it has no authority in the collective bargaining process — its sole function is interpretation and application of agreements which have been entered into in culmination of collective bargaining — it functions like a statutory court of limited jurisdiction — it has no regulatory or administrative powers. The National Railroad Adjustment Board is unique; it has no parallel in the legal structure.

In the case before us, we repeat, there is no evidence that the employes working in Canada were included in the scope of the Agreement by legal compulsion. The mingling of the employes working in Canada with those working in the United States in the same collective bargaining unit, all with the same concomitant contractual rights regardless of the International Boundary, was, we must presume, freely agreed upon. This distinguishes the instant case from the three court cases.

Assuming, **arguendo**, that Respondent could have refused to recognize Petitioner as collective bargaining agent for its employes in Canada, free of the compulsions of RLA, it failed to do so. It cannot now assert that the Agreement is void insofar as it covers positions in Canada — to do so would deprive holders of positions in the United States of some of their contractual rights.

The Agreement is a bilateral contract and the parties are legally obligated to fulfill it.

The issue narrows as to whether this Division is a proper forum in which to seek compliance.

G. This Division has Jurisdiction.

The location at which an alleged violation of a contract takes place is not material. The rights of the parties stem from the terms of the contract and not from the law of the locale of the breach. Any court of competent jurisdiction whether Federal, State or in the Dominion of Canada will entertain an **ex contractu** action if it has jurisdiction of the parties. If, in the instant case, the Board decided it was without jurisdiction the Petitioner, herein, would be free to seek a remedy in the courts.

Again, the Agreement, which we have been petitioned to interpret and apply, mingles positions and employes' rights without regard to whether the duties are performed in Canada or the United States. The holder of the position, which Petitioner seeks to have reclassified, has seniority rights in a seniority district traversed by the International Boundary. The postion happens to be in the Canadian sector. The holder of the position, however, has, by virtue of the Agreement, the contractual right to bid in a position, in his seniority district, the duties of which may be performed wholly within the United States; and, the holders of positions in that part of the seniority district that is within the United States likewise have identical rights to bid in a position in the Canadian area. We hold, under the terms of the Agreement, these rights are not divisible; nor, may they be abrogated because a position is on one or the other side of the International Boundary. An employe, holding a position in that part of the seniority district in the United States, should be secure in his contractual rights if he bids in a position in the Canadian sector of the seniority district.

The employes in the collective bargaining unit have vested rights to assignment to positions in Canada and the United States with entitlement to classification and rate of pay as prescribed in the Agreement. These contractual rights cannot be negated.

We are concerned with the dissipation of contractual rights of any of the employes in the collective bargaining unit.

We could support our jurisdiction with a number of reasons, many of which are apparent in the reading of the preceeding parts of this Opinion. However, it is enough that we can and do find that we have jurisdiction, in that, a failure to properly classify the position in Canada would be a violation of the Agreement in derogation of the contractual rights of the employes holding positions in that part of the seniority district which is within the United States. Within this framework there can be no doubt that Respondent is a "carrier," the employes "employee," and the Petitioner a "representative" within the quoted terms as defined, respectively, in RLA Section 1, First, Fifth and Sixth.

III

THE MERITS

Having found that we have jurisdiction, we proceed to consideration of the Claim on its merits.

Petitioner contends that the position should be classified as "General C.T.C. Maintainer" in satisfaction of Article II, Rule 2(a)(1) of the Agreement, which reads:

"(1) General C.T.C. Maintainer:

"An employe assigned to the maintenance of C.T.C. control machines **and** to test, correct, adjust or repair C.T.C. coding and other apparatus **and** to supervise, assist and work with C.T.C. Maintainers, their assistants or helpers in continuous C.T.C. territory. (Emphasis supplied.)

Petitioner admits that the duties of the position do not include "to supervise, assist and work with C.T.C. Maintainers, their assistants or helpers in continuous C.T.C. territory." It is for this reason that we have supplied emphasis to the conjunction "and" in the quotation of the Rule, **supra.**

Where the parties have detailed conjunctive duties as the elements of a job classification, as here, the duties of the position must include each and every of the elements to merit the defined classification — the Rule must be regarded as containing indispensable fundamental duties. Since this test has not been satisfied, we will deny the Claim.

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 Carrier has not violated the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty

Executive Secretary

Dated at Chicago, Illinois, this 24th day of July 1963.

CARRIER MEMBERS SPECIAL CONCURRENCE TO AWARD 11639 DOCKET SG-11110

We agree that the Claim is without basis under the Agreement, but we cannot subscribe to the Referee's conclusions concerning the jurisdictional issue involved. The territorial limits within which this Board can exercise its limited authority cannot be greater than those of its source, the Railway Labor Act, and the prevailing judicial authority is that the Railway Labor Act does not extend beyond the territorial limits of the United States. It was erroneous, therefore, for the Board to assume jurisdiction and decide on the merits a dispute arising outside the territorial limits of the United States.

R. E. Black

W. F. Euker

R. A. DeRossett

G. L. Naylor

W. M. Roberts

REPLY TO CARRIER MEMBERS' SPECIAL CONCURRENCE TO AWARD 11639 — DOCKET SG-11110

The Carrier Members' "Special Concurrence" to Award 11639 is in fact no concurrence but a dissent to an Award, the adoption of which they moved, and, with the Referee, voted to accept. It appears that the Carrier Members speak with a forked tongue and that the correctness of our Awards is of minimal importance if the Award reads "Claim denied."

We cannot agree with the "Special Concurrence" in any respect.

W. W. Altus
Labor Member