



Award No. 14409

Docket No. CL-15321

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Levi M. Hall, Referee

PARTIES TO DISPUTE:

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

KANSAS CITY TERMINAL RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5675) that:

The Carrier violated the Agreement of October 1, 1942, as revised and amended, when on November 20, 1963, it consolidated the Audit and Freight Department Home Seniority Rosters.

EMPLOYES' STATEMENT OF FACTS: On November 12, 1963, the Carrier issued and posted the following bulletin:

"KANSAS CITY TERMINAL RAILWAY COMPANY

AUDIT OFFICE

November 12, 1963

AUDIT BULLETIN No. 373

This is to advise that effective November 20, 1963, the freight department will be consolidated with the auditing department in accordance with Rules 16 and 17 of the agreement with the employees represented by the Brotherhood of Railway Clerks.

/s/ Roy E. Barnes

cc: General Chairman (2)
Manager of Personnel"

and furnished the Organization a copy of same by transmittal letter reading as follows:

"KANSAS CITY TERMINAL RAILWAY COMPANY

Kansas City 8, Missouri

November 12, 1963

Roy E. Barnes
Secretary and Auditor

OPINION OF BOARD: This claim does not present to this Board the type of dispute cognizable by the Board. In the record Petitioner admits that no one was adversely affected by the consolidation of the Seniority Rosters. It is also stated that if anyone in the future is affected claims will be filed. The position of Petitioner is purely conjectural.

We are faced with what is a premature dispute in the nature of a request for a declaratory judgment where no one has been injured. This Board does not decide hypothetical claims.

A similar question though not involving the same facts was submitted in Award 10934 — Miller, the Opinion of the Board in its entirety was:

“**OPINION OF BOARD:** This Claim was not presented by or on behalf of any employe involved.

In effect, the petitioning Organization is asking the Board to make a hypothetical ruling in regard to the proper interpretation of a contractual clause in the applicable agreement of the parties.

We are not empowered to grant this particular type of relief.

The Claim is adjudged barred.”

First Division Award 17064 — Stone contains the following statement;

“We think the function of this Board is the adjustment of actual rather than potential and hypothetical claims.”

See also First Division Award — 17306.

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 the Claim is improperly before us.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 11th day of May 1966.

LABOR MEMBER'S DISSENT TO AWARD 14409, (DOCKET CL-15321)

The Referee grossly erred in his Opinion and Award, and I cite the following instances:

A part of the Opinion reads as follows:

"This claim does not present to this Board the type of dispute cognizable by the Board. In the record Petitioner admits that no one was adversely affected by the consolidation of the Seniority Rosters. It is also stated that if anyone in the future is affected claim will be filed. The position of Petitioner is purely conjectural."

Carrier contended that no employe had, up to that time, been adversely affected; and the employes concurred that up to that time no employes had been affected. However, when seniority districts are consolidated it is inevitable that sooner or later someone will be adversely affected by the Carrier's arbitrary consolidation of these two seniority districts and rosters.

The Referee then states:

"We are faced with what is a premature dispute in the nature of a request for a declaratory judgment where no one has been injured. This Board does not decide hypothetical claims."

A hasty glance at the Record as shown in both the Employes' Statement of Facts and Carrier's Statement of Facts, contradict the Referee's views.

Section 3, First (i) of the Railway Labor Act, provides:

"The disputes between an employe * * * and a Carrier * * * growing out of grievances or out of the interpretation or application of agreements concerning * * * rules, or working conditions * * * 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 Referee failed in his obligation under the Act to interpret that portion of the agreement brought before him by the Employes.

Next we find the Referee stating:

"A similar question though not involving the same facts was submitted in Award 10934 — Miller, the Opinion of the Board in its entirety was:

'OPINION OF BOARD. This claim is not presented by or on behalf of any employe involved.

In effect, the petitioning Organization is asking the Board to make a hypothetical ruling in regard to the proper interpretation of a contractual clause in the applicable agreement of the parties.

We are not empowered to grant this particular type of relief.

The Claim is adjudged barred.'"

Award 14409 and 10934, referred to by the Referee, are as similar as a rabbit and a donkey — they both have long ears; there the similarity ends.

The Referee then refers to First Division Awards and concludes by quoting from the first of such:

"We think the function of this Board is the adjustment of actual rather than potential and hypothetical claims."

This dispute was, and still is, an actual dispute and the words "potential" or "hypothetical" cannot be used with respect to it.

When the Carrier officer issued bulletin No. 373, he sent the General Chairman a letter, which read in part as follows:

"The matter of handling seniority rosters is still open and we would like to arrange a conference with you at your convenience to discuss the subject."

This is a direct admission by the Carrier officer that he had committed a wrong under the provisions of the Agreement, and quite obviously intended to force the General Chairman to accede to his wishes. Upon failure of the parties to reach agreement, Carrier arbitrarily consolidated the seniority rosters. In light of Carrier's admission, no one could reach the erroneous conclusion that this claim is "potential and hypothetical" — but the Referee did.

Then after going so very far afield in his Opinion, the Referee compounded the errors by stating "That the Claim is improperly before us," followed by "Claim dismissed."

Notwithstanding all of the above erroneous conclusions, what I believe to be the most amazing circumstance surrounding this Award is the fact that no one — neither in handling on the property nor in panel discussion before the Referee — ever touched on the subject on which the Referee based his Opinion and Findings.

Circular No. 1 prohibits the parties from injecting into any dispute issues that have not been discussed on the property. It would seem quite apparent, therefore, that the Referee enjoys a privilege denied the parties, i.e., injecting new issues in his Opinion and Findings.

For the above reasons, among others, I dissent.

C. E. Kief

Labor Member
June 8, 1966

**CARRIER MEMBERS' ANSWER TO LABOR MEMBER'S
DISSENT TO AWARD 14409, DOCKET CL-15321**

In the interest of accuracy, it must be pointed out that contrary to assertions in the Dissent, jurisdiction as a threshold issue was presented to the

Referee. In fact, the precise basis upon which the case is decided was argued. The first section of Carrier Member's brief develops the point. It would serve no purpose to repeat it. The official record on file with the Executive Secretary is the best evidence on the question.

The fact that jurisdiction is not a new issue and may be raised at any level is too well established to warrant elaboration.

T. F. Strunck
R. E. Black
P. C. Carter
D. S. Dugan
G. C. White