Award No. 14654

Docket No. TE-15371

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

David H. Brown, Referee

PARTIES TO DISPUTE:

TRANSPORTATION-COMMUNICATION EMPLOYEES UNION (Formerly The Order of Railroad Telegraphers)

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Missouri-Kansas-Texas Railroad Company, that:

1. Carrier failed to give Claimant G. R. Breeze (5) days' advance notice of the closing of his position as agent-telegrapher at Hammon, Oklahoma, November 12, 1963.

2. Carrier shall be required to compensate Mr. Breeze the equivalent of five (5) days' pay at the Hammon rate in lieu thereof.

EMPLOYES' STATEMENT OF FACTS: Until November 12, 1963, Claimant was the regularly assigned agent-telegrapher at Hammon, Oklahoma, a position listed in the Agreement between the parties, which Agreement was effective as to rules on September 1, 1949, and as to rates of pay on February 1, 1951. Copy of said Agreement is on file with your Board and by reference is made a part of this dispute.

On June 5, 1962, negotiation on a national basis was consummated which resulted in an Agreement effective between the parties herein. Article III of that Agreement reads as follows:

"ADVANCE NOTICE REQUIREMENTS

"Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

November 16, 1963, General Chairman W. C. Thompson wrote Mr. R. B. George claiming five (5) days pay on behalf of Mr. G. R. Breeze account closing the agency at Hammon without five (5) working days advance notice as provided in Article III of the June 5, 1962 Agreement between railroads represented by the Eastern, Western and Southeastern Carriers' Conference Committees and the employes of such railroads represented by the Employes' National Conference Committee, Eleven Cooperating Railway Labor Organizations, reading as follows:

"ARTICLE III.
ADVANCE NOTICE REQUIREMENTS

Effective July 16, 1962, existing rules providing that advance notice of less than five (5) working days be given before the abolishment of a position or reduction in force are hereby revised so as to require not less than five (5) working days' advance notice. With respect to employes working on regularly established positions where existing rules do not require advance notice before such position is abolished, not less than five (5) working days' advance notice shall be given before such positions are abolished. The provisions of Article VI of the August 21, 1954 Agreement shall constitute an exception to the foregoing requirements of this Article."

The Carrier declined the claim at each stage of handling as indicated in copy of correspondence attached, Carrier's Exhibit A.

No conference has been held by the parties to consider, and if possible, decide this alleged unadjusted dispute in accordance with the clear, specific and mandatory requirements of Section 2, Second, of the amended Railway Labor Act, and Circular No. 1 of the National Railroad Adjustment Board, dated October 10, 1934.

(Exhibits not reproduced.)

OPINION OF BOARD: Carrier challenges the jurisdiction of this Board to consider this claim, asserting Claimants failed to comply with Section 2, Second, of the Railway Labor Act. Such section directs the parties to consider and, if possible, decide disputes in conference on the property.

There is a split of authority on this question, but where, as in the instant case, (1) neither party requests a conference, (2) the Carrier admits a violation of the agreement and (3) the question is not raised on the property by Carrier, we do not believe such section or any other in the Act deprives this Board of jurisdiction. We will accordingly proceed to other questions involved herein.

Carrier admittedly violated the Agreement. The five days notice required by Article III of the Agreement of June 5, 1962 was not given.

The sole issue remaining is whether or not we should sustain the monetary claim made herein.

Mr. Breeze left work at about 9:00 A. M. on November 12, laying off shortly after he received word of the death of his brother in a nearby community. In spite of the lay-off he was paid for a full day. At the time he left work on November 12, he still had not received notice directly from Carrier that the agency was being closed; however, he had been notified the day previous by his Organization's District Chairman that the office would be

closed on the 12th. He had immediately placed himself in the position of Agent-Telegrapher at Grandfield, Oklahoma effective November 13. The death of his brother prevented his being available on the 13th, so he remained off work at his own option until November 25 when he commenced work at Grandfield.

Claimant Breeze was paid for the 12th. He was subsequently unavailable at his own option until he reported for work at Grandfield. Thus, he suffered no pecuniary loss occasioned by Carrier's violation of the Agreement. Should we, nevertheless, impose sanctions on Carrier for the purpose of upholding the integrity of the Agreement? In this case we think not. Carrier showed some good faith in paying Breeze for his time lost on November 12. General Superintendent George advised General Chairman Thompson by letter of November 25, 1963, "We were aware of the five-day notice requirements and fully intended to allow him pay for time lost, however, we received a request from Agent Breeze on November 12th to displace the agent at Grandfield effective November 13th, which was lined up."

We think the Carrier has throughout the proceedings shown sufficient good faith to warrant our declining to assess any monetary damages. In doing so we trust we do no violence to our continuing policy of respect for the integrity of 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 the Agreement was violated by Carrier.

AWARD

Claim 1 is sustained; Claim 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVSION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of July 1966.

DISSENT TO AWARD NO. 14654
DOCKET NO. TE-15371

The Railway Labor Act requires that all disputes shall be considered in conference between the representatives of the parties designated and authorized so to confer. This is a prerequisite of the Railway Labor Act without which this Board lacks jurisdiction to consider the merits of a proceeding.

In a long line of Awards this Division has properly held that conference between the representative of the parties is mandatory. See Awards 14664-6 (Brown), 14386 (Wolf), 14379 (Lynch), 14361 (Engelstein), 14077 (Dorsey), 14078 (Dorsey), 13959 (Dorsey), 13721 (Wolf, 13644 (Bailer, 13571 (Engelstein), 13563 (Hutchins), 13509 (Moore), 13120 (Dorsey), 13097 (Hall), 13013 (West), 12499 (Wolf), 12468 (Kane), 12290 (Kane), 11971 (Stack), 11896 (Hall), 11737 (Stark), 11484 (Hall), 11434 (Rose), 11136 (Moore), 10939 (McMahon), 10868 (Kramer), 10852 (McGrath).

The record is clear there was no conference. Carrier stated "No conference has been held by the parties to consider * * *." Petitioner responded, "Since the record of this dispute does not disclose that a conference was held on the property, that may be considered fact;* * *."

Regardless of the circumstances involved in any particular dispute neither this Division nor the parties themselves has the power or authority to waive the jurisdictional requirements of the Railway Labor Act, and for that reason we dissent to that portion of the Award.

The claim should have been dismissed.

H. K. Hagerman
R. A. DeRossett
C. H. Manoogian
G. L. Naylor
W. M. Roberts

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