

Award No. 16869
Docket No. CL-17336

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Robert A. Franden, Referee

PARTIES TO DISPUTE:

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

**NEW YORK CENTRAL RAILROAD
(Southern District)**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6356) that:

(1) Carrier violated the current Clerks' Agreement at Dayton, Ohio, June 8, 1965 and continued to violate the Agreement until September 9, 1965, when it required the work of Position No. 4 to be performed at a different city in another seniority district without first meeting with the General Chairman to consummate an agreement.

(2) Carrier shall now compensate Mr. Earl C. Robbins, former incumbent of Position No. 4, a day's pay at rate of \$22.395 per day for Tuesday, June 8, 1965 and the same for each and every subsequent day, Monday through Friday of each week until September 9, 1965.

(3) Carrier shall now compensate Mr. Earl C. Robbins \$.12 each mile, twenty-four (24) miles, or \$2.88 per day, five days per week, for June 8, 1965 and all subsequent dates until September 9, 1965, the additional expense of driving from his assigned work location at Dayton, Ohio to Moraine, Ohio.

(4) Carrier shall compensate Mr. Earl C. Robbins, \$1.50 per day, five days per week for June 8, 1965 and all subsequent dates until September 9, 1965 for the noon meal while working away from his assigned work location.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 8, 1965 (commencing date of the claim), Mr. Earl C. Robbins was the incumbent of Position No. 4 located at Dayton Freight Office, on Findlay Street, in the city of Dayton, Ohio. His assignment was Monday through Friday — Rest Days, Saturday and Sunday — Rate of Pay \$22.395 per day. His duties were rating and billing.

OPINION OF BOARD: On June 8, 1965 the Carrier, pursuant to a plan of reorganization which included the establishment of a Demurrage Industrial Car Control Center at Moraine, Ohio, transferred the Claimant and his position to Moraine from Dayton, Ohio. At the time of this action there was in effect between the parties hereto an agreement referred to as the February 7, 1965 National Agreement. The Organization contends that the Carrier's action violated Article III, Section 1, of that Agreement which reads as follows:

"The organizations recognize the right of the carriers to make technological, operational and organizational changes, and in consideration of the protective benefits provided by this Agreement, the carrier shall have the right to transfer work and/or transfer employees throughout the system which do not require the crossing of craft lines. The organizations signatory hereto shall enter into such implementing agreements with the carrier as may be necessary to provide for the transfer and use of employees and the allocation or rearrangement of forces made necessary by the contemplated change. One of the purposes of such implementing Agreements shall be to provide a force adequate to meet the carrier's requirements."

It is the position of the Carrier that as the gravamen of the claim presented herein involve the application and interpretation of the February 7, 1965 National Agreement, the Dispute Committee created by that Agreement is the proper forum to hear this dispute.

There is sufficient precedent to substantiate the position of the Carrier. We hold as we did in Award No. 14979 which involved the February 7, 1965 National Agreement, that "procedures established and accepted by the parties themselves for resolving disputes under the Job Stabilization Agreement should be respected."

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 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 has jurisdiction over the dispute involved herein.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 24th day of January 1969.

LABOR MEMBER'S DISSENT TO AWARD 16869, DOCKET CL-17336

To dismiss a dispute over which we clearly had jurisdiction is not honoring the terms of the Railway Labor Act and the purposes for which this Board was created.

Under the terms of the Railway Labor Act, when we have a dispute " * * * growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions * * * " and have being for the purpose of providing for the " * * * prompt and orderly settlement of all disputes growing * * * out of the interpretation or application of agreements covering rates of pay, rules, or working conditions * * * " and fail or refuse to do so we simply are not meeting our responsibilities and obligations.

Moreover, when the Majority holds that "procedures established and accepted by the parties themselves for resolving disputes under the Job Stabilization Agreement should be respected," and proceeds to dismiss the claim then the Majority is clearly guilty of not only interpreting the parties "Job Stabilization Agreement" but "interpreting" it in a wrongful manner. For example, the parties agreed in the "Job Stabilization Agreement" that:

"SECTION 1.

Any dispute involving the interpretation or application of any of the terms of this agreement and not settled on the carrier MAY be referred by either party to the dispute for decision to a committee consisting of two members of the Employees' National Conference Committee signatory to this agreement, and a referee to be selected as hereinafter provided. The referee selected shall preside at the meetings of the committee and act as chairman of the committee. A majority vote of the partisan members of the committee shall be necessary to decide a dispute, provided that if such partisan members are unable to reach a decision, the dispute shall be decided by the referee. Decisions so arrived at shall be final and binding upon the parties to the dispute." (Emphasis ours.)

Note that their agreement is not mandatory; that their agreement makes it permissible for either party to use that method of resolving disputes arising under that agreement. In this award, and others, neither of the parties chose to submit the dispute to the committee established under the February 7, 1965 agreement. It appears that the language of Section 1, quoted above, leaves the parties free to chose for themselves whether or not to submit a dispute to that Committee and it would seem that the Majority here would have no business whatsoever passing judgment on that decision or, in effect, attempting to require them to follow that procedure rather than choosing to follow a procedure authorized under the Railway Labor Act. Clearly, the Majority has no right to make mandatory that which the parties have made permissive. Only if one of the parties chooses to refer a dispute to that Committee does that agreement provide for any compulsion, all of which clearly reveals that the parties thereto know how to write mandatory rules when they intend to and indicates that they surely would have fashioned Section 1 that way if that were their intent.

The Award is in error and fails to adjust the dispute as is intended by the Railway Labor Act. I therefore dissent to Award 16869, Docket CL-17336.

D. E. Watkins
Labor Member
2-24-69

**REPLY TO LABOR MEMBER'S DISSENT TO AWARD 16869,
DOCKET CL-17336 (Referee Robert A. Franden)**

The Dissenter misconstrues the language in Article VII, Section 1 of the February 7, 1965 National Agreement. The pertinent language is permissive as to either party to a dispute referring same to the Disputes Committee, but is not permissive as to which forum the dispute must go.

Award 16869 is correct and the Dissenter has written nothing that detracts from its soundness.

J. R. Mathieu
R. A. DeRossett
C. H. Manoogian
C. L. Melberg
H. S. Tansley