Award Number 17557
Docket Number CL-17193

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Jerry L. Goodman, Referee

PARTIES TO DISPUTE:

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

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY
NATIONAL CARLOADING CORPORATION

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-6303) that:

(1) Carrier violated the Clerks' Agreement when it refused to allow vacations earned during the calendar year 1965 or pay therefor for all its employes on the joint National-Santa Fe seniority roster who have a seniority date of October 1, 1962, or earlier and who qualify for such vacation.

(2) Carrier shall now be required to allow vacation pay due such employes.

EMPLOYES' STATEMENT OF FACTS: The collective bargaining agreement between the parties covering these employes bears effective date of February 21, 1957, a copy of which is on file with the Board and by reference is made a part of submission. Rule 29 of the agreement was amended by the adoption of the Non-Operating Employes' National Vacation Agreement of December 17, 1941, as amended.

The claim was handled on the property, in the usual manner, through the highest designated officer of the Carrier to handle such matters, and the dispute was not resolved.

Effective February 21, 1957, the National Carloading Corporation moved its operations from the Chicago and North Western Railway Company in Chicago to the Corwith, Illinois, warehouse #1 of the Atchison, Topeka and Santa Fe Railway Company, where the handling of the freight and related clerical work was performed by Carrier's employes under a tariff arrangement. Employes of the Chicago and North Western Railway who had prior to February 21, 1957, been engaged in performing this work for the C&NW, were given the opportunity to follow the work to the Carrier under the terms of a Memorandum of Agreement dated February 5, 1957, (Employes' Exhibit #1). Paragraph (6) of that Agreement provides that in the event the work in question is returned to National, the National will take over the employes then employed by Santa Fe without loss of seniority.

through 10, is an exchange of pertinent correspondence in the appeal of the claim with the initial and succeeding higher Officers of Appeal including the Carrier's Assistant to Vice President and highest Officer of Appeal, Mr. O. M. Ramsey. No conference to discuss the instant claim was ever requested or held between its initial presentation on March 6, 1966 and June 2, 1967 when President C. L. Dennis filed notice to appeal this claim to your Honorable Board.

These employes mentioned in the fourth paragraph of the Brotherhood's General Chairman's appeal of July 20, 1966, having a seniority date of October 1, 1962 and earlier are listed in Carrier's Exhibit "E" appended hereto.

(Exhibits not reproduced)

OPINION OF THE BOARD: This same issue involving the same parties has previously been adjudicated by this Board in Awards 16085 and 16086 (Woody). In accordance with the doctrine of stare decisis, the instant claim is, therefore, allowed.

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.

A W A R D

Claim allowed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October 1969.

CARRIER MEMBERS' DISSENT TO AWARD 17557, DOCKET CL-17193, REFEREE GOODMAN

I

We respectfully submit that this award is invalid because the Board lacked jurisdiction to consider the claim that is purportedly sustained. The claim was not handled in the usual manner on the property, hence the jurisdictional requirements laid down in Section 3 First (i) of the Railway Labor Act were not met. The usual conference between an officer of the Carrier before whom the claim is currently pending and the claimant or his representative was never held, and even the belated rebuttal assertions of Petitioner establish this fact. Furthermore, instead of disclosing in good faith the alleged contractual basis of the claim in correspondence and in conference on the property, Petitioner waited until the claim

had been submitted to the Board before citing an agreement provision and then cited only a rule which is totally irrelevant under the admitted facts of the case.

Although Carrier appropriately raised these jurisdictional issues in the record, and Carrier Members discussed them in the memorandum submitted at the panel- discussion, the Referee and Labor Members have refused to give them any consideration whatever. We believe the Board is legally obligated to both consider these jurisdictional issues and make reasonable rulings thereon. Had that been done, the claim would necessarily have been dismissed.

The memorandum which Carrier Members gave to the Referee and Labor Members at the panel discussion of this claim covers these and other issues in the case in greater detail, and it is incorporated herein by reference.

II

The award is invalid for the additional reason that its basic conclusion on the merits is arbitrary, in that it is diametrically opposed to the facts stipulated by the parties in the record.

The award states that the "same issue" has been adjudicated in Awards 16085, 16086, and then purports to sustain this claim under the doctrine of "stare decisis".

Awards 16085 and 16086 sustained claims on the specific basis that the employment status of the claimants therein had been terminated, and hence they were entitled to payments under the provisions of Article 8 of the National Vacation Agreement, as amended, reading: ". . . If an employee's employment status is terminated . . . he shall at the time of such termination be granted full vacation pay earned up to the time he leaves the service. . ." In those two cases the claimants stoutly contended they had terminated their employment status and the Board ruled in their favor on that point. In the instant case, both parties frankly stipulate in the record that the claimants' employment status was not terminated. At page 6 of the record the Employes allege: "The employes and their representatives maintain that the employment relationship of the Claimants has "never been terminated." Carrier consistently has taken the same position—see Carrier's statements at page 67 and elsewhere in the record.

In view of the unqualified agreement of the parties in the record before us on the point that claimants' employment status was never terminated, we believe the Labor Members and Referee acted arbitrarily and in excess of the Board's jurisdiction when they ruled that the claimants were entitled to payments under a rule which allows payments only to those who have had their employment status terminated.

For the foregoing reasons and others which are fully discussed in the memorandum submitted by Carrier Members at the panel discussion, we dissent.

/s/ G. L. NAYLOR
/s/ R. E. BLACK
/s/ P. C. CARTER
/s/ W. B. JONES
/s/ G. C. WHITE

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