



Award Number 17610

Docket Number SG-18092

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Gene T. Ritter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

READING COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Reading Company:

(a) Carrier violated the current Signalmen's Agreement, as amended, particularly Article I, Section 4 of the February 7, 1965 Mediation Agreement, when on July 17, 1965, without proper notice it suspended positions assigned to Messrs. P. H. Weidenhammer, J. F. Delp, R. Herbein, and N. F. Delp.

(b) Carrier now be required to compensate each of the four above named employes eight (8) hours at their respective hourly rates of pay.

(Carrier's File: 5201.8.)

EMPLOYEES' STATEMENT OF FACTS: Due to a Shop Crafts strike July 17, 1967, Carrier suspended all positions held by signal employes represented by this Organization.

The written notice, copy of which is attached hereto as Brotherhood's Exhibit No. 1, was posted on bulletin boards in shops, offices, stations, etc. Carrier did contact some signal employes by telephone. Claimants named herein were contacted less than sixteen hours prior to their regular starting time, or not at all.

In view of Carrier's failure and/or refusal to properly notify claimants of the suspension of their positions, claim was filed for one day's pay each at their respective rates of pay.

Claim was initially made on DAILY TIME REPORT (Form 2049 No. 2).

Under date of August 28, 1967, the Local Chairman presented a claim to the Supervisor of Signals, Mr. E. C. Coombe. Copy of that claim letter is attached hereto as Brotherhood's Exhibit No. 2. In his denial letter of September 11, 1967, Mr. Coombe merely stated: "Effort was made to contact these men to be given 16 hours notice therefore claim is respectfully denied."

The Local Chairman presened an appeal on September 26, 1967, to Mr. G. B. Blatt, Chief Signal, Electrical and Communications Engineer. In his denial, Mr. Blatt asserted N. F. Delp was notified via telephone 12:09 P.M. July 16; J. F. Delp was called via telephone 12:23 P.M. July 16 but did not answer, was finally notified via telephone 7:30 P.M. July 16; Weidenhammer and Herbein called twice each but they did not answer.

dent Chamberlain filed the following notice upon G. E. Leighty, Chairman Employees' National Conference Committee and J. P. Hiltz, Jr., Chairman National Railway Labor Conference:

"Please accept this as formal notice required by Section 3 of Article VII of the February 7, 1965 Agreement of the pendency of a dispute between this Organization and the Reading Company involving the question:

"Should Carrier be required to pay Leading Signalman P. Weidenhammer, Signal Maintainers J. F. Delp and N. F. Delp, and Assistant Signalman R. Herbein one day's pay each at their respective rates of pay because it suspended their positions on July 17, 1967 during a Shop Crafts strike without giving them sixteen hours' advance notice as required by Section 4 of Article I of the February 7, 1965 Agreement?"

"Copy of our ex parte submission is attached hereto."

On September 17, 1968 Carrier forwarded its answering submission to J. P. Hiltz, Jr., Chairman National Railway Labor Conference.

OPINION OF BOARD: There appears to be no basic factual controversy involved in this dispute. On Sunday, July 16, 1967 a strike materialized on this property. Claimant N. F. Delp was notified by telephone that as a result of the strike, his work had been suspended. This notification was made on Sunday, July 16, 1967 at 12:09 P.M. An attempt was made to contact Claimant J. F. Delp at 12:23 P.M. on July 16, 1967, but because of his (Claimant J. F. Delp) failure to answer his telephone, he was not notified until 7:30 P.M. on the same date. Claimants Weidenhammer and Herbein also failed to answer their telephones on Carrier's initial attempts for similar notification, and were not contacted until 10:10 P.M. and 10:30 P.M. respectively. On the same date (August 30, 1968) that the Organization filed its notice of intention to submit its ex parte submission to this Board, it (the Organization) submitted these identical claims to the National Disputes Committee under Article VII of the February 7, 1965 Agreement. Carrier contends that the Disputes Committee provides the proper forum for determination of this dispute and that therefore, this Board is without jurisdiction to hear this dispute. The Organization contends that this Board constitutes the proper tribunal for this dispute and that in the absence of express prohibition, it may refer this claim to both this Board and the Disputes Committee.

In Award 116 of Special Board of Adjustment 605, this claim was dismissed for reasons outlined in Award 115 of Special Board of Adjustment 605. The Organization contends that Award 115 (Supra) dealt only with Section 4 of Article I of the February 7, 1965 Agreement; that Article VI of the August 21, 1954 Agreement was not considered in Award 115 (Supra); and that this Board has the jurisdiction to consider and decide all issues contained in this dispute not disposed of in the prior Award adopted by Special Board of Adjustment 605. (Award 116). Among other Awards, the Organization relies on Award No. 17364 (Yagoda) for authority to place jurisdiction of the instant claim before this Board as well as before the Disputes Committee. A close examination of Award 17364 discloses that the Third Division case was progressed on behalf of Claimant R. L. Collins and that Award No. 50 of Special Board of Adjustment 605 recited, "The question as to Collins' right under the scheduled agreement is not before us." Therefore, Award 17364 is clearly distinguished from the instant case where the same Claimants

progressed their identical claims to both the Disputes Committee and to this Board.

In Award 116 of Special Board of Adjustment 605, the statement of the claim was:

"(a) Should Carrier be required to pay Leading Signalman P. Weidenhammer, Signal Maintainers J. F. Delp and N. F. Delp, and Assistant Signalman R. Herbein one day's pay each at their respective rates of pay because it suspended their positions on July 17, 1967 during a Shop Crafts strike without giving them sixteen hours advance notice as required by Section 4 of Article I of the February 7, 1965 Agreement."

The statement of the claim before this Board is:

"(a) Carrier violated the current Signalman's Agreement as amended, particularly Article I, Section 4 of the February 7, 1965 Mediation Agreement, when on July 17, 1967, without proper notice it suspended positions assigned to Messrs. P. H. Weidenhammer, J. F. Delp, R. Herbein and N. F. Delp."

It therefore follows that identical claims were filed before the Disputes Committee and before this Board.

Article VII—Disputes Committee—is as follows:

"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 to by either party to the dispute for decision to a committee consisting of two members of the Carrier's Conference Committees signatory to this agreement, 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 partison members of the committee shall be necessary to decide a dispute, provided that if such partison 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)

In order to prevent chaos and multiplicity of Appeals, this claim will be dismissed for the reason that the issues involved concerning the named Claimants have been determined by a Tribunal whose decisions are final and binding. See Awards 14979, 16924, 17516, 14471, 16037, 12136 and Fourth Division Award 1223.

It is also noted that Award 115 of Special Board of Adjustment 605 contained the finding that the involved positions were temporarily "suspended" not "abolished" during the Shop Craft strike. Therefore, Section 4 of Article I had no application.

For the foregoing reasons, this claim will be dismissed.

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

Claim is barred.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1969.