NATIONAL RAILROAD ADJUSTMENT BOARD

Award Number 19704
THIRD DIVISION Docket Number TE-19734

Frederick R. Blackwell, Referee

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
( Freight Handlers, Express and Station Employes
( (formerly Transportation-Communication Division, BRAC)
(
(The Denver and Rio Grande Western Railroad Company

STATEMENT OF CLAIM: Claim of the General Committee of the Transportation-Communication Division, BRAC, on the Denver & Rio Grande Western Railroad Company, TC-5857, that:

1. Carrier violated the Telegraphers' Agreement including Award of Arbitration Board No. 298 when it failed and refused to compensate Extra Telegrapher A. A. Griego for travel time and automobile mileage to and from his headquarters when taking his annual vacation.

2. Carrier shall now compensate Extra Telegrapher A. A. Griego three (3) hours and thirty (30) minutes pro rata travel time and 130 miles at .09¢ per mile.

OPINION OF BOARD: Claimant, an extra Telegrapher, was sent from Denver, Colorado, his assigned headquarters, to Minturn, Colorado, to fill a relief vacancy extending from December 26, 1970 through March 26, 1971. His vacation occurred during this period. In the absence of instructions on what he was to do at the beginning of his vacation, Claimant returned to Denver on February 12, 1971 to begin his vacation. At the end of vacation on February 23, 1971, he returned to Minturn to resume working the relief vacancy. He then filed claim for three (3) hours and thirty (30) minutes travel time and 130 miles at 9¢ a mile, the distance from Minturn to Denver.

Petitioner's position is that Carrier should have instructed claimant at the start of his vacation, either to return to his headquarters to start his vacation or to start his vacation at Minturn. Petitioner asserts that, if Carrier had directed a return to headquarters, it would have been obligated to pay the travel time and mileage claimed herein; and that, if Carrier had directed a vacation-start from Minturn, it would have been obligated to pay claimant a meal and lodging allowance of up to $7 a day for each day he was away from headquarters. In sum, Petitioner asserts that Carrier necessarily has one or the other of these obligations and that it must speak affirmatively so as to indicate which obligation it assumes; and Carrier's failure to so speak, i.e., by remaining silent, gave rise to claimant's right to determine for himself that his vacation should start at his home headquarters.

Petitioner's submission states that the dispute is predicated "upon various provisions of an Agreement" between the parties and upon the Agreement of Arbitration Award 298, dated September 30, 1967, as amended and supplemented and the interpretations thereof. Despite the reference to "various provisions" of the Agreement, the record shows that the only issues joined by the parties concern the interpretation of Arbitration Award 298. However, Board members have raised the additional issue that this Board does not have jurisdiction to render an interpretation of Arbitration Award #298. Since it is well established that jurisdiction can be questioned at any stage of the proceedings, Awards 8896 (McMahon), 12223 (Dolnick), and 19530 (Brent), we shall consider this question.

The Arbitration Award of Arbitration Board 298 was made under The Railway Labor Act and thus is governed by the arbitration provisions of that Act. One of the applicable provisions, found in Section 8(m) of the Act, requires that the agreement to arbitrate - "Shall provide that any difference arising as to the meaning, or the application of the provisions, of an award made by a board of arbitration shall be referred back for a ruling to the same board, or, by agreement, to a subcommittee of such board; and that such ruling when acknowledged in the same manner, and filed in the same district court clerk's office, as the original award, shall be a part of and shall have the same force and effect as such original award;...." (Emphasis added)

In conformity with the foregoing statutory provision, paragraph 14 of the agreement leading to Award 298 reads as follows:

> "14. Any difference arising as to the meaning, or the application of the provisions of such award shall be referred for a ruling to the Board, or to a subcommittee of the Board agreed to by the parties hereto; and such rulings, when certified under the hands of at least a majority of the members of such Board, or if a subcommittee is agreed upon, at least a majority of the members of the subcommittee, and when filed in the Clerk's office of the United States District Court for the Northern District of Illinois, Eastern Division, shall be a part of and shall have the same force and effect as such original award." (Emphasis added).

The argument against this Board having jurisdiction is that both the above statutory provision and Paragraph 14 of the agreement of the parties leading to Award 298 gave Arbitration Board 298 exclusive jurisdiction over disputes concerning any differences as to the meaning or application of the Award of Arbitration Board 298. The quoted language clearly supports the argument of exclusivity of the jurisdiction of Arbitration Board 298 and several recent Awards have so held. Awards 17845 (Dolnick), 18813 (Devine), and 19278 (Franden).

We believe these Awards are controlling in the circumstances of thi dispute and, therefore, we conclude that this Board does not have jurisdiction c the dispute.

In view of the foregoing, we shall dismiss the claim.

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 the claim is dismissed for lack of jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 13th day of April 1973.