

The Third Division consisted of the regular members and in addition Referee Elliott H. Goldstein when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Railway, Airline and Steamship Clerks,
(Freight Handlers, Express and Station Employees
(
(Chesapeake and Ohio Railway Company

STATEMENT OF CLAIM: "Claim of the System Committee of the Brotherhood
(GL-10094) that:

1. The Carrier violated the National Railroad Adjustment Board's decision rendered on August 3, 1983 and,

2. The Carrier shall now compensate Clerk D. Hall a total of forty (40) hours of pay at the pro rata rate. (The dates and times are as set forth in the individual claims attached to and made a part of this submission.)"

FINDINGS:

The Third Division of the Adjustment Board upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employees within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

The threshold issue before us involves Carrier's alleged violation of this Board's Award No. 24492 in failing to utilize the Claimant, regularly assigned to the position of Messenger-Checker C-333, in the transportation of crews from Holly to Saginaw, Michigan. This Board has carefully reviewed the record in this case, and while the Organization advanced several arguments in its submission as to why the work should properly have been assigned to Claimant, the fact remains that the Statement of Claim is premised on, and limited to, alleged violation by Carrier of an Award of this Division. This Board lacks the authority or jurisdiction to resolve that issue. See First Division Award 23340. Our authority is drawn from the Railway Labor Act, as amended (Title 45 U.S.C. Subsection 151-188). Section 151a. reads in pertinent part:

"The purposes of this chapter are . . . (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules and working conditions."

Section 153 "National Railroad Adjustment Board" First. "Establishment; composition; powers and duties; divisions; hearings and awards; judicial review" (i) states in relevant part:

"The disputes between an employee or group of employees and a carrier or carrier growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions . . . may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of facts and all supporting data bearing upon the disputes."

The foregoing provisions make clear that the jurisdiction of this Board is circumscribed by statute and confined to the narrow issues specified therein. The issue of an alleged violation of a Board Award does not fall under the rubric of the Board's authority, but instead is a matter for the court as Paragraphs (p) and (q) of Section 153 make clear:

(p) reads in pertinent part:

"If a carrier does not comply with an order of a division of Adjustment Board within the time limit in such order, the petitioner, or any person for who benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties, . . . "

and (q) reads:

"If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award

or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division, or to set it aside, in whole or in part, or it may remand the proceedings to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this chapter, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28."

The Organization's contention that the jurisdictional issue cannot be considered because it is new argument raised for the first time before this Board is not well-founded. This Board has over the years held that jurisdictional issues can be raised at any time. See Third Division Awards 8886, 9189, 10956, 16786, 19527, 20165 and 20832.

Since we do not have authority to render a decision on the question of whether Carrier violated Third Division Award 24492, the Claim is not properly before us and must be dismissed for lack of jurisdiction.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Deaver - Executive Secretary

Dated at Chicago, Illinois, this 29th day of September 1988.