

BEFORE
PUBLIC LAW BOARD NO. 119

AWARD NO. 6
(CASE NO. 5)

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

and

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

STATEMENT OF CLAIM:

(1) Carrier violated the provisions of the August 4, 1965 Memorandum of Agreement between The Detroit and Toledo Shore Line Railroad Company and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees when it discontinued effective December 31, 1965 all positions at Detroit, Michigan held by employees affected by transfer of certain work from Detroit, Michigan to Toledo, Ohio on July 30, 1965 and who were restored, effective August 5, 1965 to employment and continuation on the payroll at their former location at a rate of pay no less than their pay prior to July 30, 1965.

(2) Carrier shall now be required to pay the following employees of the office of Superintendent Car Service, who were on the payroll as of July 30, 1965, for the difference in rate of pay between the position they occupied on July 30, 1965 (plus general wage increases effective January 1, 1966 and any subsequent general wage increases) and that which they have received, if any, commencing with January 1, 1966 and each and every day thereafter until the violation of which we complain is corrected:

<u>Name</u>	<u>Seniority Date</u>	<u>Title Of Position Held 7-30-65</u>	<u>Adjusted Rate Of Pay Effective 1-1-66</u>
Polley, R. M.	5- 3-19	Reclaims Payable Clerk	\$ 25.4924
Kirkendall, M. C.	7- 8-25	Reclaims Collectible Clerk	24.7824
Thompson, F. M.	7-26-26	Secretary and Open Records Clerk	24.3124
Nopper, J. J.	3- 1-41	Demurrage and Mileage Clerk	26.2024
Smalarz, L. M.	8-29-45	Sr.Stat. Clerk	22.6624
Ezrow, N. A.	12-11-47	Interchg. & Car Record Clk.	21.4824
Gallagher, E. W.	11- 4-52	Jr. Stat. & Fgn. P/D Claim Clerk	22.4324
Abood, D. E.	10- 1-57	DTSL P/D Claim Clerk	21.2524

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JURISDICTION:

The jurisdiction of this Board is set forth in its Award No. 1. The statement of jurisdiction therein is incorporated herein by reference thereto.

OPINION OF BOARD:

On April 16, 1965, Carrier addressed a letter to Clerks advising that it was proceeding with its previously announced plan to convert manual operation to electronic operation; whereupon Clerks in its letter dated April 19, 1965, raised objection and stated its position was "that proper notice must be given and if the parties fail to reach an implementing agreement within the time limitation of such notices, the Carrier is prohibited from proceeding with changes." Carrier responded that the National Agreement of February 7, 1965, provides that notices are required only "whenever such intended change or changes are of such a nature as to require an implementing agreement as provided in Section 1;" and, further, the February 7, 1965 Agreement in this instance did not require an implementing agreement.

Without an implementing agreement the Carrier, on July 30, 1965, placed into effect a technological change resulting in the loss of six clerical positions and also in a transfer of five positions from Detroit, Michigan, to Toledo, Ohio. This action by Carrier precipitated a work stoppage on August 1, 1965, which was terminated when the parties, on August 4, 1965, entered into an agreement which in pertinent part reads:

"1. The Shore Line will file its submission with the Disputes Committee as provided in Article VII of said Mediation Agreement."

"5. Pending decision by said Disputes Committee, the performance of the work in question will be continued at Lang Yard, but employees affected by said transfer of work will forthwith be offered restoration to employment and continuation on the payroll at their former location or at such location as may be agreeable to the Shore Line and the particular employee, at a rate of pay no less than their pay prior to July 30, 1965. The decision of said Disputes Committee shall be final and binding upon the parties." /Emphasis supplied./

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Carrier complied with paragraph (1) of the Agreement; and, it is undisputed that the Claimants named in the Statement of Claim, supra, were, as stated in paragraph 5 of the Agreement "employees affected by said transfer of work."

On November 24, 1965, the parties to the February 7, 1965 Agreement rendered various interpretations to that Agreement, some addressed to the requirement for entering into an implementing Agreement under Article III. Carrier's position is that those interpretations were dispositive of the dispute filed with the Disputes Committee pursuant to paragraph 1 of the August 4, 1965 Agreement. Predicated upon that position Carrier, on December 9, 1965, notified Clerks that the dispute submitted to the Disputes Committee has been disposed of by such interpretations and that effective with completion of work December 31, 1965, all employees held in service by virtue of paragraph 5 of the August 4, 1965 Agreement would be released and could take whatever action was available to them under the Schedule Agreement. Clerks filed Claim that : (1) the interpretations rendered by the Disputes Committee did not decide the issue presented in Carrier's Submission to that Committee; (2) the August 4, 1965 Agreement remains effective until the Disputes Committee issues a "decision;" (3) "interpretations" relative to the February 7, 1965 Agreement are not "decisions;" (4) Carrier's action in terminating the application of paragraph 5 of the August 4, 1965 Agreement violated the prescriptions of that paragraph; (5) paragraph 5 of the August 4, 1965 Agreement continues in full force and effect until the Disputes Committee issues its decision in the particular dispute submitted to it; and (6) the employees named in the Statement of Claim, supra, who were adversely affected by Carrier's violation of the Agreement, are contractually entitled to be made whole and continue to enjoy the guarantees of the Agreement until its term, as prescribed in the Agreement, expires.

The issue before this Board is whether the Disputes Committee issued a decision in the dispute submitted to it by Carrier in compliance with paragraph 1 of the August 4, 1965 Agreement. If it did the Claim before us must be denied. If it had not Claimants continue under the contractual guarantee of "continuation on the payroll at their former location or at such location as may be agreeable to the Shore Line and the particular employee" until the Disputes Committee does render its decision.

Carrier moves that we dismiss the Claim on the grounds that we have no jurisdiction to interpret and apply the National Agreement of February 7, 1965, the parties having created a forum in which to resolve disputes arising out of that Agreement. Resolution of the Claim before us concerns only application and interpretation of the August 4, 1965 Agreement over which our jurisdiction is founded in Section 3, First (i) of the Railway Labor Act. Therefore, we have no need to pass upon whether this Board has jurisdiction to interpret and apply the National Agreement; but, we will look to it as an aid in determining whether the Disputes Committee has rendered a decision. Carrier's motion is DENIED.

We come now to resolution of the issue before us.

The distinction between an "interpretation" and a "decision" is elementary. An "interpretation" is merely an expression of opinion. A "decision" is the settling or termination of a particular dispute by judicial or quasi-judicial determination by a person or forum having jurisdiction. A "decision" has a dignity and finality and establishes legal rights which do not attach to an expression. This distinction, alone, compels us to conclude that the Disputes Committee did not render a "decision."

Further evidence that the Disputes Committee did not issue a decision on the issue presented to it is found in Article VII - Disputes Committee - Section 1 of the February 7, 1965 National Agreement which reads:

"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 Carriers' 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 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 supplied./

This Article, which is referred to in paragraph 1 of the August 4, 1965, Agreement, prescribes the procedural due process that the Disputes Committee is contractually bound to satisfy in the process of reaching a "decision" on a dispute "not settled on the property." No carrier or organization party to a dispute can be denied, without waiver, Disputes Committee adherence to this Article in reaching a "decision." In the instant case Clerks have not waived the contractual due process.

We find that: (1) the August 4, 1965 Agreement between the parties herein remains in full force and effect until the Disputes Committee, created under the February 7, 1965 National Agreement, renders a "decision" on the dispute submitted to it; (2) the Disputes Committee has not rendered a "decision;" (3) Claimants were and are unqualifiedly entitled to "continuation on the payroll at their former location or at such location as may be agreeable to the Shore Line and the particular employee, at a rate of pay no less than their pay prior to July 30, 1965," pending decision by the Disputes Committee. We will sustain the Claim.

This opinion is not to be construed as a holding that parties to an agreement may not agree upon the meaning of its provisions and application. Such a procedure is legally sound and is to be encouraged in the attainment of good faith collective bargaining. However, in the case before us the parties to the formulation of the "interpretations" are in disagreement as to whether the "interpretations" encompassed the dispute submitted in compliance with paragraph 1 of the August 4, 1965 Agreement. Carrier had the burden of proving its affirmative defense that the "interpretations" were of the force and effect of a "decision." It failed to satisfy the burden.

FINDINGS:

Public Law Board No. 119, upon the whole record and all the evidence, finds and holds:

1. That Carrier and Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;
2. That this Board has jurisdiction over the dispute involved herein; and,
3. That Carrier violated the Agreement.

AWARD

Claim sustained.

ORDER

Carrier is hereby ordered to make effective Award No. 6, supra, made by Public Law Board No. 119, on or before *May 2, 1968*

John H. Dorsey
John H. Dorsey, Chairman
Neutral Member

D. G. Vane
D. G. Vane, Carrier Member

C. E. Kief
C. E. Kief, Employee Member

DISSENT

Dated at Detroit, Michigan, the *2nd* day of *April* 1968.

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and

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

INTERPRETATION NO. 1

JURISDICTION:

The Agreement between the parties, dated November 14, 1967, provides, inter alia:

"(10) ... In case a dispute arises involving the interpretation of an award, the Board, upon request of either party, will convene and interpret the award in the light of the dispute."

Under date of April 19, 1968, Carrier petitioned the Board to reconvene for the purpose of interpretation of its Awards 1, 2, 4 and 6. A copy of the petition is attached hereto and made part hereof. The Board was convened and the parties were afforded full opportunity to argue their respective positions relative to the questions presented. Questions 1, 2, 3, 4, and 5, it was stipulated at the hearing, are in issue relative to AWARD NO. 6 (Case No. 5).

INTERPRETATIONS:

A. Questions 1, 4 and 5

These questions are answered in our Interpretation No. 1, AWARD NO. 1 (Case No. 1) which is incorporated herein by reference thereto.

B. Question 2

Question: "Is the Carrier obligated to compensate a claimant during any period in which the claimant was voluntarily absent from duty?"

Answer: NO.

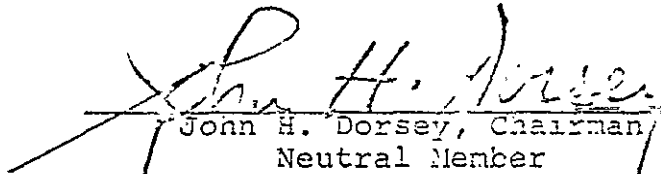
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C. Question 3

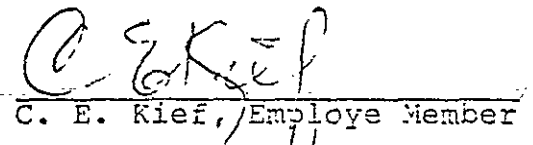
Question: "Does a voluntary resignation of seniority rights terminate the Carrier's liability?"

Discussion: In the case presented the employe voluntarily transferred from the collective bargaining unit covered by the Clerk's agreement to another craft or class represented by another organization. The question is answered in the light of those facts.

Answer: YES.


John H. Dorsey, Chairman
Neutral Member


D. G. Vane, Carrier Member


C. E. Kief, Employee Member

Dated at Chicago, Illinois, this 27th day of May, 1968.

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and

THE DETROIT AND TOLEDO SHORE LINE RAILROAD COMPANY

INTERPRETATION NO. 2

Award in this case, sustaining the claim, issued May 2, 1968. The Agreement between the parties establishing this Board, dated November 14, 1967, provides, inter alia:

"(10) . . . In case a dispute arises involving the interpretation of an award, the Board, upon request of either party will convene and interpret the award in the light of the dispute."

Upon petition of Carrier, dated April 19, 1968, the Board issued Interpretation No. 1 of Award on May 27, 1968. In that interpretation we held: (1) Claimant had an obligation to mitigate damages; and (2) Carrier had the right to request Claimant to supply information that she had reasonably sought employment, of like dignity to that which she enjoyed while employed by Carrier, during referred to periods in the Opinion when she was not working for Carrier and during which she would have worked for Carrier absent Carrier's violation of the Agreement.

Subsequently, Carrier refused to:

"Compensate /Claimant/ for the period starting July 14, 1966, to August 10, 1967, alleging that during this period she made no attempt whatsoever to find other employment and, therefore, did not make a reasonable attempt to mitigate the damages due."

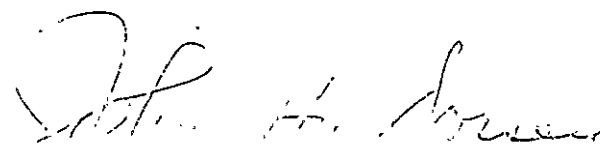
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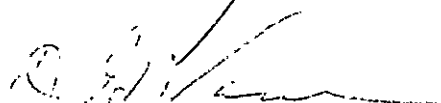
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Under date of December 3, 1968, Clerks petitioned to interpret the Award - - Clerks arguing that Claimant had made reasonable efforts during the involved period to obtain employment through the Railroad Retirement Board and by application for employment to, at least, two railroads.

On February 21, 1969, the Board met in Executive Session, in Chicago, Illinois, to consider Clerks' petition for interpretation and the answer of Carrier thereto. The Board decided: (1) it had jurisdiction of the subject matter; (2) the averments as to Claimant's efforts to reasonably obtain employment during the periods involved did not satisfy her obligation to mitigate damages; and (3) granted Clerks a reasonable time in which to adduce additional evidence that Claimant had made reasonable efforts to seek employment.

Subsequent to February 21, 1969, Clerks not having supplied additional evidence in support of its position, Carrier, did on April 17, 1969, move that the Board sustain Carrier's position that Claimant had not fulfilled her legal obligation to mitigate damages in the period involved; and, consequently, under the make whole theory the Award did not obligate Carrier to compensate her for wages lost during that period. The motion is SUSTAINED.


 John H. Dorsey, Chairman
 Neutral Member


 D. G. Vane, Carrier Member


 C. E. Kief, Employee Member

Dated at Chicago, Illinois, this 1st day of May, 1969.