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PUBLIC LAW BOARD NO. 138
SPOKANE, PORTLAND AND SEATTLE RAILWAY CO. (System Lines)
AND
BROTHERHOOD OF RAILROAD SIGNALMEN

The members of this Board representing the carrier and the employees having been unable to agree on the establishment and jurisdiction of the Board, Paul D. Hanlon was then duly appointed a neutral member of the Board by the National Mediation Board for the purpose of determining said procedural matters under the provisions of Public Law 89-456.

STATEMENT OF THE ISSUES

The issues as submitted by the parties at the hearing are as follows:

"(1) Is a dispute which has not been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, referable to a P.L. Board?

(2) Is a dispute (claim) considered as being received by the Third Division, National Railroad Adjustment Board when that Board receives notice served by either a carrier or representative of the employees of intention to file an ex parte submission 30 days hence?"

STATEMENT OF FACTS

The relevant facts giving rise to the present dispute are as follows:

On November 28, 1966 the claim in question was declined by the highest officer of the carrier designated to handle such claims.

On August 23, 1967, the Organization served notice on the Third Division of its intention to file an ex parte submission on September 22, 1967 in connection with the claim. This notice was served pursuant to Circular No. 1 of the National Railroad Adjustment Board (issued October 10, 1934) which reads in pertinent part as follows:

"... The petitioner will serve written notice upon the appropriate Divisions of the Adjustment Board of intention to file an ex parte submission on a certain date (thirty days hence), and at the same time provide the other party with copy of such notice. For the purpose of identification such notice will state the questions involved and file a brief description of the dispute. The Secretary of the appropriate Division of the Adjustment Board will immediately thereupon advise the other party of the receipt of such notice and request that the submission of such other party be filed with such Division within the same period of time."

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On August 30, 1967, the Carrier wrote to the Organization requesting the establishment of a so-called P.L. Board to hear the claim.

On September 13, 1967 the Organization replied to the Carrier and declined to join in referring the matter to a P.L. Board, on the grounds that the claim had already been submitted to the National Railroad Adjustment Board and had not been pending there for twelve months.

On September 14, 1967 the Carrier wrote to the National Mediation Board advising of the Organization's declination to join in referring the matter to a P. L. Board and requested that the Board designate a representative of the Organization to serve on a P. L. Board to hear the dispute.

Subsequently, after considerable correspondence which is not relevant to the issue to be decided here, on December 21, 1967 the Board appointed an Organization member and docketed the matter as Public Law Board No. 138 (at the request of the Organization a different Organization member was subsequently substituted for the one originally designated by the Board.)

The issues in dispute were then framed by the parties and submitted to this Board as indicated in the "Statement of the Issues" above.

FINDINGS

In answer to the first question submitted it is apparent from a reading of PL 89-456 that prior to any attempt by either party to refer a dispute to the National Railroad Adjustment Board, either party may by taking appropriate steps refer it to a special board of adjustment (a PL Board) if it is a "dispute otherwise referable to the Adjustment Board."

In answer to the second question submitted, we hold that the filing of a notice of intent to file a submission with the Third Division does not cause the dispute to become "pending before the Adjustment Board" within the meaning and intent of PL 89-456.

Since the claim in question in this case is clearly a dispute otherwise referable to the Adjustment Board, and since at the time the Carrier

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requested the submission of the claim to a PL Board on August 30, 1967, the claim was not yet pending before the Third Division, it follows that the claim is now properly within the jurisdiction of this PL Board No. 138.

The parties have indicated that no other procedural difficulties exist, and in fact they have previously drafted and executed a procedural Agreement in connection with a different PL Board which can be utilized as a form of Agreement to be executed and applied to decide the issues in the claim referred to in this decision.

AWARD

PL Board No. 138 has jurisdiction over the dispute or claim designated on the property as "Carrier's File: 1250-a; Case No. S-130" and the representatives of the parties shall forthwith execute a procedural agreement and take all steps necessary for the Board to hear and decide said claim.

Dated at Portland, Oregon this 31st day of May, 1968.

/s/ Paul D. Hanlon
Paul D. Hanlon
Procedural Neutral Member