

PUBLIC LAW BOARD NO. 175

PARTIES
TO
DISPUTE:

Brotherhood of Railroad Trainmen

and

Chicago, Milwaukee, St. Paul and
Pacific Railroad Company (Lines East)

BACKGROUND:

The purpose of Public Law Board No. 175, as established by the National Mediation Board, is to resolve the procedural dispute between the parties.

The Board met at the office of the Carrier, 347 Union Station Building, Chicago, Illinois on August 6, 1968. David Dolnick, the neutral member, was elected, by vote of the Carrier and Organization members, as Chairman of the Board. A hearing on the procedural issues was held on this date. Carrier submitted a written submission and written exhibits. The Organization argued its position orally and submitted written exhibits.

FINDINGS:

The sole and only procedural issue to be decided by this Procedural Board is "whether or not a Public Law Board may legitimately be established when there is already in existence on the property a Special Board of Adjustment, which is willing to consider currently-submitted cases if one of the parties so desires."

On March 20, 1956 the parties entered into an agreement providing, in part, as follows:

"For the purpose of disposing of pending time claims and grievances,
IT IS AGREED:

- A. There shall be established, in accordance with the provisions of the Railway Labor Act, as amended, a special board of adjustment which shall be known as the C.M.St.P.&P.R.R.Co. (Lines East) Special Board of Adjustment, hereinafter referred to as the 'Board'. Such Board shall have jurisdiction of claims and grievances, including discipline, submitted to it under this agreement, arising out of the interpretation of agreements governing

wages, rules or working conditions, between the Carrier and the employees of said Carrier represented by the Order of Railway Conductors and Brakemen or the Brotherhood of Railroad Brakemen". (Emphasis added). (Should be Brotherhood of Railroad Trainmen).

* * * *

"F. The Board shall have jurisdiction only of claims and grievances submitted under the terms of this agreement. A list, to be designated as 'Original List', of cases to be submitted to the Board shall be prepared by mutual agreement between the parties. Such list shall include only cases on which decision has been rendered prior to the date hereof by the highest officer of the Carrier designated to handle appeals on such matters. In addition, there may be submitted to the Board by any of the parties a 'Supplemental List', or 'Lists' of any claims or grievances on which decision is hereafter rendered by such officer prior to the date of the final meeting of the Board, as provided in Section D hereof." (Emphasis added)

Pursuant to this agreement Special Board of Adjustment No. 140 was established. It is not clear whether that Special Board of Adjustment heard and disposed of all of the claims and grievances contained in the "Original List". But it is clear that "Supplemental Lists" were submitted to that Board from time to time and that claims and grievances therein contained were heard and disposed of. The record shows, however, that the claims of R. J. Fitzgerald, a Conductor-Brakeman, T. T. Plumb, a Conductor, and S. Dattolico, a Brakeman, were not in the "Original List" nor in any "Supplemental List" submitted to Special Board of Adjustment No. 140.

Special Board of Adjustment No. 140 acquires no jurisdiction and has no right to hear and decide a claim or grievance until and unless the parties mutually submit the issue in dispute to that Board. The claims and grievances contained in the "Original List" were properly submitted to the Special Board for adjudication. Disputes arising thereafter may be submitted to the Special Board for consideration and decision. And either party may, for any reason, refuse to submit the claim or grievance

to that Board. If the parties had intended to establish a permanent Special Board of Adjustment to hear and decide all claims or grievances arising out of the interpretation of the basic agreements, they should have so provided. The Agreement of March 20, 1956 does not provide that the Special Board of Adjustment No. 140 has such jurisdiction.

This is further confirmed by a jointly executed letter dated March 9, 1956 which reads, in part, as follows:

"It is mutually understood and agreed that insofar as claims and grievances including discipline involving employees represented by the BRT, referring particularly to Paragraph 'F' of that Agreement that the supplemental list or lists referred to in Paragraph 'F' must be submitted to the board not later than January 1, 1957 unless otherwise mutually agreed."

And Special Board of Adjustment No. 140 has confirmed this understanding. In Award No. 1195 issued on September 21, 1967 that Board said:

"On March 30, 1967 the Organization notified the Carrier of its intent to submit the claim hereinabove described to this Board. On April 19, 1967 the Carrier notified the Organization that it did not concur in the docketing of this case with the Board. On May 4, 1967 the Organization listed this case, among others, with the Board.

On March 20, 1956 the parties entered into an agreement establishing this Board. At the same time, by letter agreement, the parties agreed that no supplemental list would be submitted to the Board after January 1, 1957 'unless otherwise mutually agreed'.

As it affirmatively appears the parties have not agreed to submit this case to this Board, we have no jurisdiction of it and have no alternative but to dismiss the claim.

On the basis of the entire record, this Procedural Board finds that a Public Law Board may be established to consider

and adjudicate the three currently submitted cases.

AWARD

1. A statutory Public Law Board has jurisdiction to hear and decide the claims of (1) Brakeman, S. Dattolico, (2) Conductor, T. T. Plumb and (3) Conductor-Brakeman, R. J. Fitzgerald for reinstatement to their respective positions with full seniority and vacation rights and with pay for lost time.

2. Public Law Board No. 175 shall be established and shall be governed by the terms and conditions contained in the Memorandum of Agreement hereto attached.

Executed at Chicago, Illinois, this 28th day of August, 1968.



David Dolnick, Neutral Member and
Chairman

S. W. Amour, Carrier Member



~~R. J. Fitzgerald~~, Organization Member
E. L. DIRKS,

MEMORANDUM OF AGREEMENT
between the
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY
(LINES EAST) (The Carrier)
and its employees represented by the
BROTHERHOOD OF RAILROAD TRAINMEN
(The Organization)

FOR THE PURPOSE OF ESTABLISHING A SPECIAL BOARD OF ADJUSTMENT
IT IS AGREED:

1. There shall be established a Special Board of Adjustment under the provisions of the Railway Labor Act, as amended, which shall be known as the C.M.St.P&PRCO. - BRT Special Board of Adjustment, hereinafter referred to as the "Board". Such Board shall have jurisdiction over cases as listed in Organization's notice of March 1, 1968 and submitted to it under this agreement, arising out of the interpretation and application of agreements governing wages, rules, and working conditions between the Carrier and the employees of said Carrier.

2. The Board shall consist of three (3) members. One shall be selected by the Carrier and shall be known as the "Carrier Member". One shall be selected by the Organization representing the employees and shall be known as the "Organization Member". The third member, who shall be Chairman of the Board, shall be a neutral person, unbiased between the parties, who has had previous experience on the National Railroad Adjustment Board.

Members of the Board, other than the Chairman, may be changed from time to time, and at any time, by the respective parties designating them. The initial Carrier Member and Organization Member shall be named by the Carrier and the Organization within five (5) days after the effective date of this agreement.

3. The Carrier Member and the Organization Member shall meet in Chicago, Illinois, within five (5) days after designation of the initial party members for the purpose of considering the matters subject to the jurisdiction of the Board, and if no agreement is reached within ten (10) days, to select the Neutral Member of the Board. If within ten (10) days after the first meeting the party members are unable to agree upon the Neutral Member, they shall jointly request the National Mediation Board to appoint the Neutral Member. In case of a permanent or temporary vacancy on the Board, with respect to either party member or the neutral, the

vacancy shall be filled in the same manner as in the original selection.

4. The Board shall meet in Chicago, Illinois at a time and date designated by the Neutral Member. The Board shall establish the rules of procedure for its government. Thereafter, The Board shall meet at regularly stated times and continue in session until all matters submitted to it under this agreement are disposed of. The Board shall hold hearings at a location determined by the Neutral Member within the City of Chicago, Illinois, on the line of the Carrier. The Board may, if the members thereof deem advisable, hold hearings at other places on the line of the Carrier. The Board shall have the authority to employ a secretary and other assistants and incur such other expenses as it deems necessary for the proper conduct of business.

5. The compensation and expenses of the Carrier Member shall be borne by the Carrier. The compensation and expenses of the Organization Member shall be borne by the Organization. The compensation of the Neutral Member shall be set and paid by the National Mediation Board. All other expenses of the Board shall be borne half by the Carrier and half by the Organization.

6. The Board shall have jurisdiction only of matters submitted under the terms of this Agreement, and as set out in Attachment A attached hereto and made a part hereof.

7. Matters shall be submitted to the Board within such time as the Board may provide. The Board shall not have jurisdiction of disputes growing out of requests for changes in rates of pay, rules and agreements, and shall not have authority to change existing agreements governing rates of pay, rules and working conditions, nor to grant new rules.

8. The Board shall hold hearings on each case submitted to it. Due notice of such hearing shall be given the parties. At such hearings, the parties may be heard in person, by counsel, or by other representatives, as they may elect. The parties may present orally and in writing statements of facts, supporting evidence and data, and argument of their position with regard to each case being considered by the Board. The Board shall have authority to require or permit the production of additional evidence, either oral or written, as it may desire, from either party providing it pertains to the issue or issues presented in the submission.

9. The Board shall make findings and render an Award in each matter submitted to it within thirty (30) days from the date initially considered by the Board with the sole exception of a case withdrawn from the Board by joint request of the Carrier and the Organization. Such findings and Award shall be in writing,

and copy shall be furnished the respective parties to the dispute. Such Awards shall be final and binding upon both parties to the dispute. Each member of the Board shall have one vote and a majority of the Board shall be competent to render an Award or make such other rulings and decisions necessary to carry out the functions of the Board.

In case a dispute arises involving an interpretation of an Award while the Board is in existence or upon recall within thirty (30) days thereafter, the Board, upon request of either party, shall interpret the Award in the light of the dispute.

10. The Board hereby established shall continue in existence until it has disposed of the matters submitted to it and/or any other matters mutually agreed to and submitted to this Board, after which it shall cease to exist, except for interpretation of its Awards as above provided.

11. This agreement is effective this ²⁴ day of August, 1968.

Executed at Chicago, Illinois, this day of August, 1968.

FOR BROTHERHOOD OF RAILROAD TRAINMEN

CHICAGO, MILWAUKEE, ST. PAUL
AND PACIFIC RAILROAD COMPANY
(LINES EAST)

E. E. O'Neil
~~SECRETARY~~ GENERAL CHAIRMAN

Vice President - Labor Relations

APPROVED:

David Dolnick
David Dolnick - Procedural Referee

ATTACHMENT A

CASE NO. 1. Request for the reinstatement, with pay for all time lost, of former Old I&D Division Brakeman S. Dattolico with seniority, vacation and all other rights on account dismissed from the service of the Carrier for violation of the Carrier's rules.

CASE NO. 2. Request for the reinstatement of Milwaukee Division, First District (Old C&M Division) Conductor T. T. Plumb with seniority, vacation and all other rights unimpaired as well as compensation of 150 miles for each date held out of service commencing with April 7, 1967.

CASE NO. 3. Request for the reinstatement of Milwaukee Division, First District (Old C&M Div.), Conductor-Brakeman R. J. Fitzgerald with seniority, vacation and all other rights unimpaired and pay for all dates held out of service, August 26, 1967, and all subsequent dates of record, handled in accordance with the Time Limit on Claims Agreement.