PUBLIC LAW BOARD NO. 274

Between

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

and

TRANSPORTATION-COMMUNICATION DIVISION
OF BROTHERHOOD OF RAILWAY, AIRLINE
AND STEAMSHIP CLERKS

FINDING AND AWARD OF PROCEDURAL
NEUTRAL MEMBER DUGAN

Carrier and the Organization failed to reach an agreement in regard to the establishment of Public Law Board No. 274. After written request by the Organization was made upon Carrier by letter, dated August 2, 1968, the undersigned was appointed as neutral member of the Board on November 29, 1968 by the National Mediation Board with respect to the establishment and jurisdiction of the Board as provided for in Public Law 89-456.

THE ISSUES

The issues submitted to the procedural neutral for determination are:

1. Does the Board have jurisdiction to hear and decide disputes involving third parties, and which in this case involve Cases No. 2, 6, 7, 19, 34, 42, 43, 45, 55, 66, 109, 113, 114, 115, 116, 118 through 122, 124 through 131 and 140 of Appendix "A" of the Organization's request for a Public Law Board?

2. Does the Board have jurisdiction to hear disputes subject to the time limit provisions of the August 21, 1954 Agreement, which,

in this instance, concern Cases No. 4, 5, 6, 17, 18, 82, 113, 116, 152 and 165 of Appendix "A" of the Organization's request for a Public Law Board?

3. Does the Board have jurisdiction to hear disputes that have previously been submitted to the Third Division, National Railroad Adjustment Board, for determination, in this instance Cases No. 114 and 160 of Appendix "A" of the Organization's initial request for a Public Law Board?

4. Does the Board have jurisdiction to hear cases that are added subsequently to the Organization's initial list of cases in Appendix "A" to its request for a Public Law Board, herein Cases No. 168 to 441 inclusive?

BACKGROUND

On August 2, 1968, by letter, the Organization's President, Mr. A. R. Lowry, made request directed to Carrier's Manager of Personnel, Mr. M. L. Erwin, for the establishment of a Special Board of Adjustment to resolve disputes listed in Appendix "A" and attached to said letter of request for said Public Law Board. Carrier by letter, dated August 15, 1968, through its Manager of Personnel, Mr. M. L. Erwin, acknowledged receipt of the Organization's request letter for said Special Board of Adjustment and objected to a number of disputes as not being referrable to an Adjustment Board and/or under the time limit provisions of the Agreement rules and suggested a

conference date to discuss the matter; Conference was had between the parties on August 29, 1969 and Carrier restated its objections to certain cases listed in the Organization Appendix "A" in connection with its request for a Public Law Board on the grounds that a number of cases involved third parties; a number of cases were outlawed under the "time limit" rule of the August 21, 1954 Agreement, and that Cases No. 114 and 160 could not be remanded to the property by the Third Division of the National Railroad Adjustment Board to be heard by a Special Board of Adjustment.

On October 10, 1968 at a subsequent conference, Carrier designated Mr. J. H. Nall as Carrier member of said Special Board of Adjustment and again restated its objections to certain cases being heard by said Special Board of Adjustment. Pursuant to the Organization's request for a procedural neutral, on November 29, the National Mediation Board appointed Paul C. Dugan as procedural neutral in regard to the establishment and jurisdiction of Public Law Board No. 274.

On March 3, 1969, the Organization advised the Mediation Board that it proposed to supplement its original Appendix "A" to include Cases No. 168 and 305. Carrier by telegram, dated March 7, 1969, to the National Mediation Board, objected to the proposed additional cases being listed to Public Law Board 274.

On March 18, 1969, Carrier's Mr. M. L. Erwin, by letter without prejudicing its rights under the provisions of Article V of the

August 21, 1954 Agreement covering time limit on claims, authorized a 60-day extension in time concerning some of the additional cases proposed to be heard by Public Law Board 274. The Organization, by letter, dated March 19, 1969, advised the National Mediation Board that said additional Cases No. 168 through 308, should be considered as part of Appendix "A" sent with the original request for the Public Law Board or in the alternative to be decided by the Procedural Referee. On April 22, 1969, Carrier granted an additional 60-day extension in time limit on claims that had not expired as of April 21, 1969. By letter, dated May 22, 1969, Carrier's Manager of Personnel, Mr. M. L. Erwin, restated Carrier's objections to certain cases being before Public Law Board No. 274 and to the inclusion of additional Cases No. 168 through 308.

On July 14, 1969, Carrier's Mr. M. L. Erwin advised the National Mediation Board that the extension of time limit granted in certain of the proposed additional Cases of Nos. 168 through 308 had expired and that said Cases are barred under the time limit provisions of the August 21, 1954 Agreement.

On July 28, 1969, by letter the Organization's President, Mr. A. R. Lowry, advised the National Mediation Board that it proposed to supplement its original Appendix "A" by adding Cases No. 309 through 341.

Subsequent thereto the parties met with the procedural neutral on August 14, 1969 and September 3, 1969 and hearings were had on said issues before said procedural neutral.

FINDINGS OF THE BOARD

A. In regard to the first issue as to whether this Public Law Board No. 274 has jurisdiction to hear disputes involving third party interests, it is seen that this question has been determined in a number of procedural awards, namely Public Law Board No. 1; Public Law Board No. 34; Public Law Board No. 88; Public Law Board No. 137 and Public Law Board No. 82.

Therefore, in view of said Awards, Cases No. 2, 6, 7, 19, 42, 43, 45, 55, 66, 109, 113, 114, 115, 116, 118, 119, 120, 121, 122, 124 to 131 inclusive and 140 are to be included in this Board's docket.

B. In regard to the second issue as to whether this Board has jurisdiction to hear disputes subject to the time limit provisions of the August 21, 1954 Agreement, Carrier vigorously argues that inasmuch as a Public Law Board is not constituted until both the Carrier member and the Organization member has been designated, and therefore since this happened on October 10, 1968, Cases 4, 5, 6, 17, 18, 72, 113, 116, 152 and 165 are not referrable to the National Railroad Adjustment Board because barred by the time limit provisions of the August 21, 1954 Agreement and consequently cannot be listed for determination by this Board.

In regard to this procedural question, it is seen that a request was made by the Organization for a Public Law Board on August 2, 1968, before the expiration of the time limit rule. Does the making of said request stop the running of the time limit rule although both members have not been designated? We believe that it does. As was said in the procedural award of Public Law Board No.251:

> "In short, the only logical and reasonable way to interpret the act is to hold that a written request by either party for the establishment of a Public Law Board, setting forth therein a dispute or disputes to be resolved by the Board, constitutes the institution of proceedings before a tribunal having jurisdiction thereof for purposes of stopping the running of any time limits on said claims or disputes."

Therefore, Carrier's contention in this regard is without merit and it must therefore be denied.

C. The third issue to be resolved is whether or not this Board can decide a dispute that has previously been submitted to the Third Division of the National Railroad Adjustment Board for determination.

The Organization, on June 7, 1968, sent a written notice to the National Railroad Adjustment Board of its intention to file an ex parte submission to the Board in regard to a telegrapher's claim, which claim was listed in the Organization's Appendix "A" to the request letter of August 2, 1968 for a Public Law Board, and listed said claim as Case No. 160. On July 30, 1968, the Organization made a written notice to the National Railroad Adjustment Board of its

intention to file an ex parte submission to the Board in regard to another telegrapher's claim, which claim was later listed in Appendix "A" to its request of August 2, 1968 for a Public Law Board, and said claim was listed as Case No. 114.

The Second Paragraph of Public Law 89-456, the pertinent part thereof provides as follows:

> "If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referrable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, * * * * ."

It is clearly seen that the two claims filed with the National Railroad Adjustment Board, later designated as Cases No. 114 and 160, by the Organization in its list of Cases submitted for determination by a Public Law Board, were not pending before the National Railroad Adjustment Board for a period of twelve (12) months from the date the claim was received by the National Railroad Adjustment Board. In fact, only a few days had transgressed before the Organization listed the claims to be heard by a Public Law Board. It would be incongrous to conclude that it was the intent of Congress when it passed Public Law 89-456 to permit disputes or claims to be pending before the National Railroad Adjustment Board and a Public Law Board at the same time. Therefore, it is our conclusion that Cases No. 114 and 160 cannot be included on the docket of Cases for determination by this Board.

D. Concerning the issue as to whether or not this Board has jurisdiction to hear disputes or claims that were subsequently added by the Organization to the initial list of cases submitted with the original request for a Public Law Board by the Organization, a close examination of Public Law 89-456 shows that the Act makes no provision for adding disputes or cases during the course of establishing the Board and reaching an Agreement for the Establishment and jurisdiction of said Board. To reach such a conclusion, we feel, would violate the intent of Congress when it passed Public Law 89-456, to relegate the Special Board of Adjustment, as requested by either the Organization or Carrier, as the case may be, to disputes or cases pending at the time said request is made by either party.

As was said in the procedural award of Public Law Board No. 137:

> "This procedural neutral believes that under Public Law 89-456 the written request (with the intervening withdrawal of Case 12) limits his authority to order cases included in the Board's docket * * * ."

Therefore, we find that Cases No. 168 to 441 inclusive shall not be included in the docket of this Special Board of Adjustment (Public Law Board).

AWARD

1. The following Cases shall be included in the docket of this Special Board of Adjustment (Public Law Board):

Cases No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 161, 162, 163, 164, 165, 166 and 167.

2. The Agreement establishing this Board shall contain the following provisions:

> "A determination that a third party may have an interest in a dispute shall be made by the Board as constituted with the Neutral member to consider and dispose of the dispute. Where it is determined that a third party may have an interest in a dispute, such party shall be notified by the Board of the dispute. Such third party shall be, together with a copy of the claim and a copy of this agreement, given reasonable notice of the time and date the dispute is to be heard by the Board and an opportunity shall be afforded said third party to appear before the Board on such date and present its cases to the Board in a manner consistent with the rules and procedures adopted by the Board, including the right to appear at any executive session of the Board convened for the purpose of considering and adopting any proposed award involving third parties. The Neutral member of the Board shall be one of the two or more members of the Board determining whether a notice or hearing shall be given to third parties to the disputes and shall be one of the two or more members of the Board rendering an Award in a dispute where notice of hearing has been given to third parties."

Dated at Tyler, Texas, this 7th day of October, 1969.

P. C. Carrigan

Chairman and Procedural Neutral

L A Bobo

Employee Member

J. N. Nall

Carrier Member