

Public Law Board No. 4056

NATIONAL MEDIATION
BOARD

OCT 27 11 59 PM '86

NATIONAL RAILROAD
ADJUSTMENT BOARD

Parties to Dispute

Sheet Metal Workers International)
Association)
vs)
Illinois Central Gulf Railroad)

Procedural Case No. 1
Award No. 1

ISSUE IN DISPUTE

Must a dispute, under the Railway Labor Act, which has been pending before the National Railroad Adjustment Board for more than twelve (12) months, be referred to a Public Law Board upon the written request by either party to the dispute?

BACKGROUND

The Organization filed a claim in January of 1983 with the Carrier on the grounds that supervision had improperly assigned work at its Centralia, Illinois facility on various dates in December of 1982 and January of 1983. After the claim was denied it was appealed on property by the Organization up to and including the highest Carrier officer designated to hear such before the Organization gave notice to the National Railroad Adjustment Board of its intention to submit the dispute to the Second Division. The Organization filed its notice of intent with the NRAB in February of 1984. In May of 1984 the Executive Secretary of the NRAB informed the parties that the Board had duly received the submissions of both parties and that the dispute had been assigned Second Division Docket No. 10584. In December of 1984 the NRAB advised the parties that the case had deadlocked and that it was being submitted to a referee. Slightly more than a year later, in December of 1985, the Carrier gave written notice to both the Organization and the NRAB of its intent to submit the case to a Public Law Board which it requested be established for this purpose under Section 3, Second of the Railway Labor Act. The Organization refused to agree to establish a Public Law Board and it refused to appoint a Organization member to such.

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In January of 1986 the dispute was heard by a referee at the Second Division of the National Railroad Adjustment Board under the designation of Docket No. 10584. At the January, 1986 hearing the Carrier member of the NRAB refused to argue the merits of the case. Carrier's Second Division member argued rather the threshold issue of jurisdiction over the case. It was the argument of the Carrier member that the Second Division referee had no jurisdiction over the case and that a Procedural Public Law Board established by the National Mediation Board was the appropriate forum to decide whether the Carrier's earlier request to refer the case to a Public Law Board, on its merits, was legally correct under the Railway Labor Act. The Organization member of the Second Division argued that the Division did have jurisdiction over the case, that the Division referee should join a majority on its merits, and the Organization member thus argued the merits of the case.

In March of 1986 the Executive Director of the National Mediation Board directed that a Public Law Board be established. At the same time the NMB designated an Organization member for this PLB. Absent agreement by the Carrier and the Organization over the selection of a neutral, ^{1/} the NMB was requested by the Carrier to appoint a procedural neutral to resolve the issue of jurisdiction. The procedural Public Law Board was designated as PLB No. 4056. Should the neutral

1/In its June 6, 1986 correspondence to the Carrier the Organization's representative states that he thought the parties had agreed to use the same neutral for the PLB who had heard the case at the Second Division of the NRAB and "...Carrier is unwarranted by asking to again hear a case by the same referee through PLB". A study of the spring, 1986 correspondence by the parties to the National Mediation Board shows some cross purposes: apparently one party is addressing the issue of choosing a merits neutral and the other the issue of choosing a procedural neutral.

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rule with the majority that the dispute, under the Railway Labor Act, be properly heard before a Public Law Board rather than before the Second Division of the NRAB, an additional PLB to hear the merits of the case will have to be established. The Second Division neutral chosen by that Division to hear Docket No. 10584 in January of 1986 was referee Eliot H. Goldstein. As of this date the Second Division had not issued a majority ruling on the January, 1986 hearing of Docket No. 10584. The procedural neutral appointed by the NMB is Edward L. Suntrup.

FINDINGS

Section 3, Second of the Railway Labor Act provides, in pertinent part:

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 referable 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, or if any carrier makes such request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board...The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees

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with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by an neutral member of the board selected or appointed...Such neutral member shall cease to be a member of the board when he has determined such matters...In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon an award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment...Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board...

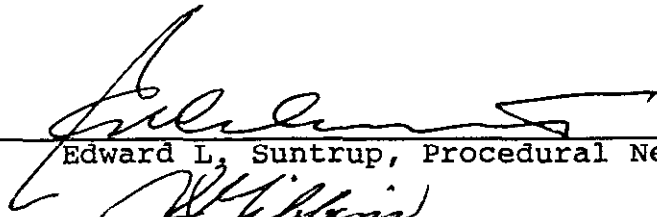
A review of the facts of this case shows that the Carrier has complied with the provisions of the statute and that the circumstances surrounding the dispute were such that the Carrier was legally correct when it made request that the dispute be heard before a Public Law Board rather than the National Railroad Adjustment Board. The original dispute is one that is referable to the NRAB, it was pending before that forum for more than twelve (12) months when request was made by the Carrier to move it to a PLB, and the request for such move was made in writing by the Carrier. It is the argument of the Organization, in correspondence to the Staff Director/Grievances of the National Mediation Board which is dated January 21, 1986, that "...Section 3, Second of the Railway Labor Act indicates that a case may be withdrawn if no action has been taken" and that the removal of Docket No. 10584 from the NRAB's Second Division is barred, in this instance, because "...action has, in fact, been taken". That action, as of the date of that correspondence, consisted in having assigned the Docket to a referee and "...awaiting acceptable dates (from the referee) as to the hearing". Such interpretation of Section 3 of the Railway Labor Act is not supported by the language of the Act quoted, in pertinent part, in the foregoing.

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The Board can further find no evidence in the record to the effect that the Organization has ever actually contended that the conditions of the statute, as written, have not been met. The Board must conclude, therefore, in view of the clear and unambiguous language of the Act that the appropriate place for the settlement of the dispute at bar, given the actions by the Carrier initiated in December of 1985, is before a Public Law Board and not before the Second Division of the National Railroad Adjustment Board. Such conclusion is consistent with prior Awards emanating from Public Law Boards 46 and 209.

AWARD


The merits of the dispute originally filed with the Second Division of the National Railroad Adjustment Board by the Organization in February of 1984, subsequently docketed by that Division as No. 10584, is to be properly heard before a Public Law Board and not that Division pursuant to written notice filed by the Carrier in December of 1985 to have the case withdrawn from the National Railroad Adjustment Board.



Edward L. Suntrup, Procedural Neutral



J. S. Gibbins, Carrier Member



K. S. Flansburg, Employee Member

Date: October 21, 1986