PUBLIC LAW BOARD NO. 409

U. T. E.

vs.

UNION PACIFIC RAILROAD CO.

Rule 111 (c) of the current Collective Bargaining Agreement between the U.P.R.R. and the U.T.E. provides as follows:

> "(c) The procedures outlined in paragraphs (a) and (b) shall govern in appeals taken to each succeeding officer. Decision of the highest officer designated to handle claims and grievances shall be rendered within ninety days unless prior to such decision conference is requested by either party, in which event decision shall be rendered within sixty days after written notice of decision of said officer he is notified in writing that his decision is not accepted. All claims or grievances involved in a decision of the highest officer shall be barred unless within one year from the date of said officer's decision, proceedings are instituted by the employe or his duly authorized representative before a tribunal having jurisdiction pursuant to law or agreement of the claim or grievance involved. It is understood, however, that the parties may by agreement in any particular case extend the one year period herein referred to."

On April 23, 1969 the organization made formal request served under Public 89-456 to establish a Public Law Board of Adjustment. A list of twenty (20) cases to be submitted to the Board was attached and identified as Exhibit A.

Carrier received the request and list of cases April 24, 1969.

The Carrier responded on April 28, 1969 stating that none of the twenty (20) claims listed were properly referable to a Public Law Board of Adjustment, claiming they were in default under the Time Limit provisions of the Agreement.

The cases involved were denied by the Carrier between April 23, 1969 and April 30, 1969.

The letter of April 23, 1969 is sufficient for the establishment of a Board of Adjustment, it was delivered within the time period and its contents satisfied the requirements of the rule, Claim E O 2146 is in default and the organization agrees that it is.

Claim 2361 is the claim of an engineer whose rates of pay and working conditions are governed by an Agreement between the Carrier and the Brotherhood of Locomotive Engineers, thus a third (3rd) party notice must be presented to them concerning the contemplated Board of Adjustment.

Award

Public Law Board No. 409 shall be established and shall be governed by Agreement attached hereto. The Board shall have jurisdiction over all of the claims listed on Attachment A to the Agreement.

Dated at Everett, Washington this 1st day of November, 1971.

PHILLIP SHERIDAN
Procedural Neutral Member

PLB 409

DISSENT OF ORGANIZATION MEMBER
TO PROCEDURAL AWARD
PUBLIC LAW BOARD 409

During the hearings before this board it was recognized that one case involved a claim for a member that was working under the jurisdiction of the engineers' agreement held by another organization and it was the understanding of the organization member of the board, and I believe the carrier member, that in view of this fact the agreement would contain provisions which would adequately protect third party interest as follows:

> "If any claim or grievance involves an employee while engaged in work subject to any rule contained in an agreement other than that between this organization and the carrier, such claim or grievance will be disposed of under the recognized interpretation placed upon the schedule rule envolved by the officials of the company and general committee of the organization making that agreement, and the board shall forthwith make written request for the delivery to it of such interpretation within thirty days. In the absence of such established interpretation placed upon the schedule rule involved, the award issued in resolving the claim or grievance shall not constitute a precedence as to the interpretation or application of such schedule rule."

However, the neutral choosing to ignore what the undersigned understood to be an understanding compels this dissent.

In view of the many times the "third party" dispute, injected by the neutral, has beendealt with previously by various tribunals, including some twenty or more Public Law Board, it is difficult to understand how the neutral here could inject a dispute where none existed between the parties and reach such an erroneous decision. It can only be concluded that he had absolutely no previous knowledge of this type of dispute, had insufficient or limited range of experience in the railroad industry, and completely failed to comprehend or differentiate between the disputes of this nature clearly defined in prior decisions.

Simply stated, a jurisdictional question was injected by the neutral over the right of this organization to handle a claim for an engineer under the terms of the engineers' agreement held by another organization, there was no dispute between the parties.

There was no work jurisdictional dispute between two organizations giving rise to third party intervention.

The actual claim emanated from a dispute involving right to perform certain service for the carrier as between yard service or road service employees, both under the same collective bargaining agreement.

PLB 409

We believe the nature of the various so-called "third party" disputes cannot be more clearly and objectively clarified than was done by Neutral David H. Stowe in the procedural award of Public Law Board No. 408, which is appended hereto to be considered a part hereof. Similar language, with the same neutral, was again stated in the procedural award of PL Board No. 427.

In addition to the above citations, the "third party" question has been dealt with directly, or as facets of the issue by Public Law Boards, 1, 2, 34, 37, 71, 82, 87, 88, 105, 131, 137, 185, 192, 226, 317, 375, 432, and 586; by the Supreme Court in TCEU vs. UP RR, 385 U.S. 157, 165-166 (1966) the same carrier here involved; and USDC Dist. of Colo. BLE vs D&RGW,CA. No. C-717, 290 F. Supp. 612, Sept. 9, 1968.

A decision permitting participation in the preceedings of a PL Board by a third party intervenor in other than a true work jurisdiction dispute can only be likened to the salmon fighting his way against an opposing current to lay an egg.

H. M. Price
General Chairman, UTU(E)
Organization Member