

PROCEDURAL PUBLIC LAW BOARD NO. 4357

Award No. 1
Case No. 1

PARTIES TO
DISPUTE:

SOUTHERN RAILWAY COMPANY

and

UNITED TRANSPORTATION UNION--
YARDMASTERS DEPARTMENT

QUESTION
AT ISSUE:

Under the terms of Section 3, Second, of the Railway Labor Act, and the terms of the parties Collective Bargaining Agreement, may the disputes listed in attachment A of the proposed Public Law Board Agreement properly be referable to a Public Law Board?

FINDINGS:

Upon the whole record, after hearing, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted under Public Law 89-456 and has jurisdiction of the parties and the subject matter.

Certain claims dealing with alleged infractions of the rules in 1986 were filed by the Organization and progressed to the highest designated officer of Carrier. Those claims are identified by the file numbers YM-464 and YM-415. The parties met on March 27, 1987 at the highest level to discuss the claims. Following that meeting on the same day, Carrier wrote to the General Chairman of the Organization to confirm the conference and requested the establishment of a Special Board of Adjustment to

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Adjudicate the two unsettled claims. By letter dated April 2nd, the General Chairman of the Organization rejected Carrier's offer of a Special Board of Adjustment and indicated the intent of the Organization to progress the claims to the Fourth Division of the National Railroad Adjustment Board.

By letters dated July 10 and July 22, 1987, notice of intent was given to the Fourth Division on the two claims by the Organization. By letter dated July 10th, Carrier requested assistance from the National Mediation Board to resolve the procedural matter and asked the Board to establish a Special Board of Adjustment. The National Mediation Board proceeded to establish this Board to deal with the procedural question over the protest of the Organization.

The Organization maintains that its posture is supported and indeed controlled by the provisions of Rule 18 (c) of the Collective Bargaining Agreement which provides as follows:

"The procedure outlined in paragraphs (A) and (B) pertain to appeal by the employee and decision by the Carrier, shall govern in appeals taken to each succeeding officer except in cases of appeal from the decision of the highest operating officer designated by the Carrier to handle such disputes. All claims or grievances involved in a decision by the highest officer shall be barred unless within 6 months from

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the date of said officer's decision proceedings are instituted by the employee or his duly authorized representative before the appropriate division of the National Railroad Adjustment Board or a system, group or regional board of adjustment that has been agreed to by the parties hereto as provided in section 3 Second of the Railway Labor Act. It is understood, however, that the parties may by agreement in any particular case extend the six months' period herein referred to."

The Organization also relies on Section 153, First (I) of the Railway Labor Act which states:

"The disputes between an employee or a group of employees and the Carrier or Carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934 shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the adjustment board with a full statement of the facts and all supporting data bearing upon the dispute."

The Organization argues that the Agreement may limit a parties rights under the act and has provided support for that position in terms of awards from a number of boards. In the same context the Organization notes that agreements set the usual manner of handling disputes. Finally, as a matter of principal, the Organization maintains that the Board is without authority to

alter the Collective Bargaining Agreement of the parties. Bearing these principals in mind, the Organization notes that Rule 18 (c) of the Agreement restricts the Carrier from petitioning the National Mediation Board to establish a Special Board of Adjustment. Such an appeal is barred unless the proceedings are instituted by the employee or his duly authorized representative within the time limits provided in Rule 18 (c), according to the Organization. In this instance, no alternate forum was agreed to by the parties and no agreement was requested by the Organization. On the contrary, the General Chairman of the Organization made it known to the employer that the dispute would be progressed to the Fourth Division of the National Railroad Adjustment Board. The Organization concludes that the controlling Agreement supports its position that Carrier had no right to request a Special Board of Adjustment to handle the disputes involved herein.

Carrier relies on Section 3 Second of the Railway Labor Act which provides in pertinent part 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 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 a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such 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 a 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 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. Each member of the board shall be compensated by the party he is to represent.

The members of the board so designated shall determine all matters not previously agreed upon by the carrier and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board, selected or appointed and compensated in the same manner as in hereinafter provided with respect to situations where the members of the board are unable to agree upon an award."

The Carrier maintains that under the statutory language cited above, the Organization was bound to join in establishing the

requested Board. Carrier argues that the identical question raised in this dispute has been resolved before a number of other boards (i.e. Public Law Board No. 138) and all those disputes have resulted in decisions indicating that Carrier has the right to request a Public Law Board rather than the matter being submitted to a division of the National Railroad Adjustment Board. In addition, according to Carrier, such public law boards have the right to determine the jurisdictional questions which may be raised (prior to dealing with the substantive issues).

Carrier notes that in the instant dispute, claims were handled in the usual manner on the property and since there was no resolution of the claims, Carrier exercised its statutory right to request a public law board to decide the merits of the claims. Carrier argues that the right is absolute, granted by statute and is not subject to collective bargaining. Carrier notes that Petitioner's position that Rule 18 restricts Carrier's right to request adjudication of disputes before a public law board is incorrect and flies in the face of the statutory language.

Carrier notes that the exclusive right that the Organization asserts it has under the Rule does not exist. Had the Organization that right, it could indeed delay the resolution of

claims for a very long period of time by merely waiting six months to petition the Adjustment Board for adjudication and thus

increasing the Carrier's potential liability. In this instance, Carrier properly requested the establishment of a public law board to consider the dispute and under the statute, it had every right to do so.

The Board notes that Rule 18 (c) was taken from a National Agreement reached in 1954. The purpose of the particular provision at that time was to establish certain time limits. The rights which Carrier asserts it has in this case are spelled out by the statutory language indicated above. Furthermore, Rule 18, relied upon by the Organization, predates the statutory limits which provided for the establishment of public law boards. For reason of the timing of the rule alone, it is impossible for Rule 18 to have modified rights which the statute conferred several years subsequent to the adoption of the rule.

While the Board recognizes the parties rights to establish the usual and customary handling of disputes, in the instant dispute, it is apparent that the statutory language governs. There could be no modification of the statutory language by prior rules agreements which did not deal with such language. The question at issue herein must be answered in the affirmative.

AWARD

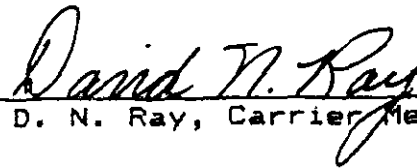
The issue is answered in the affirmative.



I. M. Lieberman, Procedural Neutral-Chairman



D. R. Carver, Employee Member



D. N. Ray, Carrier Member

Atlanta, Georgia
February 17, 1988