

PUBLIC LAW BOARD NO. 56

PROCEDURAL AWARD NO. 1

PARTIES
TO DISPUTE

AKRON & BARBERTON BELT RAILROAD COMPANY

BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN

NATURE OF DISPUTE:

The purpose of the Board as established pursuant to Act of Congress Public Law 89 - 456, is to resolve a procedural dispute between the parties.

The Board convened in Cleveland, Ohio, on July 20, 1967, with all the members present.

FACTS:

The carrier dismissed Engineer D. C. Flaker on February 14, 1966. The organization rejected the dismissal, and allege that there was a procedural failure on the part of the carrier. The determination was referred to the disputes committee November 14, 1966 by letter of the organization.

On February 1, 1967, the organization, ex parte, made submission of the Flaker claim to the First Division, National Railroad Adjustment Board, which submission was received by the First Division on February 5, 1967. On January 4, 1967, the carrier

requested of the Organization the establishment of a Public Law Board. The Organization denied this request on January 31, 1967.

On February 6, 1967 the Carrier made application to the National Mediation Board for a partisan member of a Public Law Board. This request was first denied as of February 28, 1967, but later granted May 9, 1967. At the time the Carrier made request to the Organization for a public law board (January 4, 1967), the Carrier did not list the disputes to be handled by the board, nor was such a listing of disputes required by Act of Congress or the rules of the National Mediation Board. Subsequently, the Carrier, on January 20, 1967, advised the Organization that the Flaker matter was to be listed before the proposed Public Law Board.

FINDING AND AWARD:

The National Adjustment Board and Public Law Boards have concurrent jurisdiction over both the parties and subject matter of disputes submitted to their respective jurisdictions. Once a dispute has been submitted to one tribunal, or the other, and that tribunal has jurisdiction, such jurisdiction is exclusive. The jurisdiction may be relinquished by the Adjustment Board, or Public Law Board, or the jurisdiction may be removed, under section three, second provision, of the Railway Labor Act, if the dispute has been pending before the National Adjustment Board for 12 months or more.

A Public Law Board does not come into existence until a majority of its members are appointed. The request for a board does not create the board. Here, the board was not in existence until May 9, 1967. The dispute, having been submitted to the National Adjustment Board on February 6, 1967, is within the exclusive jurisdiction of the First Division, National Adjustment Board, and cannot be considered by Public Law Board No. 56 until subsequent to February 6, 1968, and only if the matter is not then received by the National Railroad Adjustment Board.

DATED: Cleveland, Ohio

December 20, 1967

L. L. L.

Organization Member

W. Davidson

Carrier Member

Attley D. Hughes

Arthur W. Sempliner
Chairman and Neutral Member