PUBLIC LAW BOARD NO. 71

AWARD NO. 1
CASE NO. 1
FILE T-1734

PARTIES TO DISPUTE: BROTHERHOOD OF RAILROAD TRAINMEN
versus
THE COLORADO AND SOUTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: "I am appealing claims numbers T-2601, T-2604, T-2613, E-2202, T-2614 T-2618, T-2619, T-2620, T-2634, T-2637, T-2638, T-2640, T-2646, T-2647, T-2648, T-2649, T-2652, and T-2653. Claim is made for one yard day for the Conductor and Brakemen on each claim number as specified above. Also, appealing claim numbers T-2568, T-2602 and T-2603, claiming one yard day for the first three men on the Brakemen's extra board at Trinidad, Colorado. On each claim number road crews were required to perform switching in Trinidad Yard. This consisted of making up of their own trains before departure from Trinidad. Agreement dated June 25, 1964, ARTICLE V - COMBINATION ROAD-YARD."

FINDINGS: This claim was first challenged by Carrier on the ground that it had not properly been progressed under the Time Limit Rule: That rule requires that claim must be presented in writing by or in behalf of the employee involved. The claims here were presented in writing on behalf of named employees with a claim number assigned to each claim. They were acknowledged and declined by duplicate cut-out slips showing names of claimants and claim numbers. They were identified on appeal by reference to claim numbers on the cut-out slips which had been returned to the Superintendent, without naming the claimants. We find the cases were properly progressed up to and including appeal to the highest officer of the Carrier required.

It is further urged that Employees did not effectively institute proceedings for the final disposition of these claims within one year from March 5, 1965, the date of the highest officer's decision, as required under Rule 39 (D) of the Agreement.

It appears that on February 28, 1966, Employees filed with the First Division of the National Railroad Adjustment Board one copy of Employees' submission, referring this claim to that Board, but failed to furnish the additional copies as required by the rules of procedure. There the matter rested until March 5, 1966, when Employees' General Chairman mailed Carrier a letter seeking the establishment of a Special Board of Adjustment to resolve this claim and others listed in the letter. This letter was inartificially composed but its intent was plain to comply with the statutory requirement of requesting the establishment of a Law Board and specifically stated that it was made pursuant to the Railway Labor Act, as amended, and pursuant thereto this Board was established by mutual agreement of the Carrier and Organization, which recited that it should have jurisdiction of claims and grievances submitted to it under that Agreement and included this case as the first one submitted.

The filing of single copy of submission constituted the institution of proceedings as required by the statute. The failure to furnish additional copies within the time required by the rules of procedure was ground for dismissing the claim but such action was not sought. Instead, the claim was withdrawn. It would appear that the Time Limit Rule was complied with thereby but, in any event, the letter seeking establishment of this Law Board constituted timely proceedings for final disposition of the claim. The letter requesting the establishment of this Law Board dated March 5, 1966, was within one year from the date of the highest officer's decision and satisfied the requirement of the rule.

Principally, Carrier's defense is on the ground that the service here complained of was permitted under Item 5 of Article V of the National Agreement dated June 25, 1964, reading:

> "5. At points where a yard crew or yard crews are employed, the starting time of the first yard crew assignment shall begin a twelve-hour period (herein called the first twelve-hour period) within which road crews may not perform yard service not permitted on the day immediately preceding the effective date of this agreement. Road crews may be required to perform any yard service during a second twelve-hour period beginning at the expiration of the first twelve-hour period provided yard crew assignments are not assigned to start or terminate during such second twelve-hour period."

While not urged in their submission, Employees here contend that Section 5 does not apply, first because Article V and its initial paragraph provides that:

> "Yard as used herein is defined to mean a common terminal point where a seniority roster for yard ground men is maintained."

and that Trinidad is not a yard as so defined and Article V does not apply there.

Assuming that Section 5 is intended to be restricted to yards as so defined, it appears that there was a Yardmen's seniority roster at Trinidad and the fact that Yardmen were also added to the Brakemen's Southern Division seniority roster and Southern Division Brakemen were carried on the Trinidad Yardmen's seniority roster would not change its status. The numerous awards cited by Employees present different issues and rules not before us.

Employees rely principally on their contention that pursuant to the initial paragraph of Article V the entire Article concerns and should be applied to the conditions under which the last yard crew assignment in a yard or on a

shift where more than one yard assignment may be employed may be discontinued. Such was not the situation here.

The numbering of the sections following the initial paragraph seems to support such contention but the broad title of Article V, "COMBINATION ROAD-YARD", and the wording of the latter sections of the Article and specific limitations in several sections to situations resulting from discontinuance of a yard crew pursuant to Section 1 are convincing that the other sections are not so limited. We have studied carefully the proposals of the parties during negotiation of the June 25, 1964, Agreement and the documents showing progress of negotiations but must find that the final Agreement as signed by the parties prevails over former proposals and tentative agreements. We feel confirmed in our conclusion in the like interpretation of Article V by other organizations and special boards.

Carrier has challenged the authority of Employee organization here to represent Conductors who are represented on this property by the ORC&B. That Organization had adopted a plain expression of its interpretation of Article V concurring in that of Carrier and it seems that Employees here could properly represent the Conductors but must accept the interpretation made by their Organization, which would require a denial of their claim.

AWARD: Claim denied.

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Mortimer Stone, Chairman

R. D. Wolfe, Carrier Member

J. H. Shepherd - DISSENT
J. H. Shepherd, Employee Member

Denver, Colorado,
November 14, 1967