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PUBLIC LAW BOARD NO. 2668

AWARD NO. 1

CASE NO. 1

BRAC - S. B. #218

PARTIES TO THE DISPUTE

Norfolk and Western Railway Company

and

Brotherhood of Railway, Airline and Steamship Clerks,
Freight Handlers, Express and Station Employees

PROCEDURAL ISSUE

May the Brotherhood of Railway and Airline Clerks withdraw a claim docketed with Public Law Board 2668 before a hearing has begun without mutual agreement?

OPINION OF BOARD

In this dispute the parties have agreed to establish Public Law Board No. 2668 pursuant to the requirements of Ph 89-456. The BRAC General Chairman prepared an agreement delineating the powers and authority of said Board; but an impasse developed regarding the interpolation of the clause, "No case may be withdrawn after hearing thereon has begun except by mutual consent of the parties."

Carrier contends that the Organization's insistence that this language be incorporated in the proposed PLB Agreement, would be to permit the Organization to withdraw docketed claims, not heard by the Board, which might be of legal and practical significance to the parties. It argues that sanctioning this practice would be to nullify the extensive preparatory work done by the parties, particularly the Carrier in processing the appealed claim on the property. It asserts that the fundamental intent of the Railway Labor Act 1926 as Amended vis grievance resolution would be vitiated since claims could be filed and withdrawn for tactical and political reasons. It avers that it does not object to the withdrawal of claims not heard by the Board per se, but only if the parties mutually agree to the withdrawal. It recommended the following language: "No case may be withdrawn except by mutual agreement by the parties."

Contrawise, the Organization contends that while it has the indisputable right to withdraw claims from the docket of the Public Law Board, it is willing to restrict this right by requiring mutual agreement when the claim reaches the hearing stage. It asserts that Carrier has not proposed to limit or foreclose its right to compensate a pending claim before arbitration and that this correlative is conceptually analogous to the Organization's position. It argues that its interpretative posture is consonant with the spirit and intent of the Railway Labor Act 1926 as Amended relative to the prompt and orderly settlement of grievances and uniformly consistent with the language commonly found in other Public Law Board Agreements. Moreover, it contends that any claim which the Organization withdraws prior to a hearing will not be referred to the National Railroad Adjustment Board's Third Division or another Public Law Board. In essence, it notes, the claim would be moot.

In considering this dispute, this Board recognizes the diversity of viewpoints on this issue. Clearly, Carrier is correct, at least pragmatically when it contends that methodically progressing a claim on the property requires time and painstaking preparation and should be adjudicated, when appealed to Arbitration, unless the parties mutually agree to withdraw it from the docket. Its assertion that a claim regarding the interpretation or application of a contested Rule should be litigated is plainly logical from an administrative perspective to facilitate the orderly management of human resources. But in this case, the record and prevailing legal authority, supports the conclusion that unilateral withdrawal of a claim by the Organization prior to hearing, is a permissible action that is widely observed in the railroad industry. Carrier's contention that the Fifth U.S. Circuit Court of Appeal's holdings in New Orleans and Northeastern Railroad Company vs. Bozeman 312F2d264 (1963) and Deaton Truck Line, Inc. vs. Local Union 612 314F2d418 (1962) are on point with this dispute, is incorrect. In the first case cited, the Court compelled the nonaggrieved party to arbitrate a dispute, which it was contractually bound to do, and thus enforced the Agreement's grievance arbitration clause. In the second case cited, the Court ordered the same duty to arbitrate remedy, but noted that the word "may" in the clause, "the dispute may be submitted," meant that either aggrieved party had the right to require arbitration. However, the aggrieved party was the union, not the company and the Court enforced the demand for arbitration. But, importantly, the claim was filed by the union and progressed to arbitration by it. Under this holding, if the Company filed the grievance and progressed it through the Appeals process as per the Agreement's requirements, it could seek judicial enforcement of its arbitral demand. In the cases that reach the Public Law Board stage of the appeals process in the railroad industry, the aggrieved party is the Organization acting on behalf of its client-member and consistent with the aforesaid rulings, can compel arbitration. The interpretative thrust extends to the aggrieved party claiming

claiming an enforceable right under the existing contract. Thus, since Carrier was not the petitioning party in this instance, the rulings are not applicable.

On the other hand, the record shows that two (2) prior Public Law Board decisions dealt with this precise issue. In Public Law Board 1681 vis Awards 13 and 14, the majority permitted the Organization to withdraw the two cases docketed with the Board. There were no contract prohibitions precluding pre-hearing withdrawal and the decisions are on point with the question before us. But of interest in Carrier's dissenting opinion in those cases, is its concern that the dismissal awards would restore the disputes to the status they occupied following their declination by the employer. In the instant case, we find no plausible basis for this apprehension. The Organization explicitly stated that once a case had been withdrawn from the docket of the Public Law Board prior to a hearing, it would not be referred to another Public Law Board or the National Railroad Adjustment Board. It disclaimed such action.

In Public Law Board 1682, Award No. 48, the primary issue was whether a case could be withdrawn from a PLB docket, notwithstanding the presence of a provision in the PLB Agreement that required mutual consent for withdrawal only if the case had been heard by the Board. It was an identical provision to the one proposed by the Organization herein. While finding for the Organization, upon the clarity and unambiguous intent of the provision, PLB Board No. 1682 also referenced the determinations of PLB 1681. Similarly, the provision sought by the Organization here is not uncommon in other Public Law Board Agreements. In fact, it is routine language and reflects the widely held view in arbitral opinion that a complainant may usually withdraw a case at any point prior to the arbitration hearing, but that after the hearing has commenced, he may not withdraw it without mutual consent. It facilitates expeditious settlement without imposing detriment to the other party. We believe, upon the record, that this finding is legally and precedentially the most persuasive and that PLB decisions carefully reviewed herein manifest an intellectual and legal consistency that we cannot disregard. The Organization can, of course, agree with Carrier's position and adopt more restrictive language. This is a voluntary decision between the parties. In the absence of such mutual acquiescence, this Board must follow strictly the judicial holdings enunciated by predecessor tribunals in the railroad industry on identical issues and appropriately observe the principle of stare decisis. Accordingly, we permit the Organization to withdraw claims docketed with PLB 2668 before a hearing has begun without mutual consent.

FINDINGS

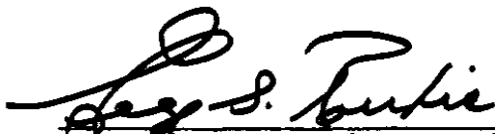
Public Law Board No. 2668, upon the whole record and all of the evidence finds and holds as follows:

1. That the Carrier and Organization involved in this dispute are, respectively, Carrier and Organization within the meaning of the Railway Labor Act;

2. That the Board had jurisdiction over the dispute involved herein.

AWARD

The Organization may withdraw a claim docketed with Public Law Board 2668 before a hearing has begun without mutual consent.



George S. Roukis, Chairman and
Procedural Neutral



J. D. Gereaux, Carrier Member



S. G. Bishop, Organization Member

September, 1980

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