

NATIONAL RAILROAD ADJUSTMENT BOARD
FOURTH DIVISION

Referee Edward L. Suntrup

Award Number 4195
Docket Number 4223

PARTIES Boston and Maine Corporation
TO
DISPUTE: Railroad Yardmasters of America

STATEMENT
OF CLAIM:

1. Under the provisions of Mediation Agreement (Case No. A-9288) dated February 2, 1973, and having complied with the terms and conditions outlined therein, is Carrier authorized to abolish a Yardmaster assignment over an objection by the Yardmasters Organization.
2. If Carrier were to initiate such action, over the objection of the Yardmasters Organization, would this be considered a major or minor dispute.

OPINION OF BOARD: A review of the record shows that the Carrier filed a claim with the Fourth Division of the National Railroad Adjustment Board on September 16, 1983. The claim seeks Board decision on two (2) points. The first is whether the Carrier complied with its February 2, 1973 Agreement with the Organization when it abolished a Yardmaster assignment. The record shows that Notice of Abolishment of the assignment in question is dated August 29, 1983. The second point of the claim requests Board decision on the major or minor dispute status of the intent of the Carrier to abolish the Yardmaster's assignment if the Carrier were to "initiate such action".

Nowhere in the record can the Board find evidence that either Parts 1 or 2 of the Statement of Claim were handled on property "in the usual manner" prior to September 16, 1983. The Carrier is, therefore, in contravention of both Section 3 First (i) of the Railway Labor Act and of the procedural requirements of Circular No. 1 issued by the National Railroad Adjustment Board on October 10, 1934. The former requires that claims be handled "...in the usual manner up to and including the chief operating officer of the Carrier...", and the latter requires that: "(n)o petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934". Numerous Awards emanating from this Board have barred such claims as the instant one (Third Division Awards 24759, 24801, 25097; Fourth Division Award 4074 inter alia).

The Carrier states that "the instant case is before the Board in compliance" with an Order of a U.S. District Court Judge for the District of Massachusetts who verbally instructed the Carrier on September 12, 1983 to file claim with the National Railroad Adjustment Board. Such Order does not nullify, however, the jurisdictional bounds and powers of this Board as stipulated by the Railway Labor Act with respect to claims not handled in the usual manner on property.

Further, this Board has no authority to interpret Federal Law as so requested in Part 2 of the Statement of Claim. The Board is limited to "questions arising out of the interpretations and applications of railway labor Agreements" (Third Division Award 19790; also Third Division Award 20368 and Second Division Award 6462).

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The Carrier and the Employes involved in this dispute are respectively Carrier and Employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.


The parties to said dispute waived right of appearance at hearing thereon.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

Attest:


Nancy J. Dever
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December 1984.