

Award No. 14576

Docket No. 23450

**FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD**

39 South La Salle St., Chicago 3, Illinois.

The First Division consisted of the regular members and in addition Referee A. Langley Coffey when award was rendered.

PARTIES TO DISPUTE:

ORDER OF RAILWAY CONDUCTORS

**DELAWARE, LACKAWANNA & WESTERN RAILROAD
COMPANY**

STATEMENT OF CLAIM: Claim of Conductor J. J. Wilton for an additional day at yard rate on February 23, 1943; on above date Conductor Wilton set cars out at Secaucus and moved balance of train to Hoboken and returned to Secaucus with caboose.

Also an additional day for men listed in exhibit (A) who performed similar service subsequent to February 23, 1943, and who were not compensated in accordance with previous First Division Award No. 11201.

Also that check-back of time slips in Central Accounting Bureau be allowed to February 23, 1943.

EMPLOYES' STATEMENT OF FACTS: On February 23, 1943, Conductor Wilton was called to go east out of Hampton at 6:45 P. M. Engine 1646, on his arrival at Secaucus set out cars and moved balance of train to Hoboken and returned to Secaucus with caboose.

When crews in extra (chain gang) service are called to go east from Hampton (or Scranton), their terminal is either Port Morris or Secaucus, Pt. Morris is approximately 86 miles east of Hampton, Secaucus is 129 miles east of Hampton, Hoboken is 4 miles east of Secaucus.

There is around the clock transfer service between Secaucus and Hoboken performed by yard men.

Secaucus and Hoboken yard are under the jurisdiction of one terminal yardmaster, yardmen at Secaucus and Hoboken are on one roster.

Road men hold no seniority in yard service. Road men cannot be run through terminal without the starting of a new day.

POSITION OF EMPLOYES: By requiring crews in extra (chain gang) service to move cars from Secaucus to Hoboken, the carrier has disregarded the provision of Article II, paragraph "B" Rules and Rates of Pay for Conductors and Trainmen current Agreement, see exhibit "B" attached.

Also Rule "9" (S. U. Contract) has been disregarded, see exhibit "C", attached.

The Brotherhood of Railroad Trainmen who now hold right of representation as a craft for the Conductors on the property, made submission to the board for a Conductor holding seniority rights as such and all men who performed similar service and received Award No. 11201 which was in their favor.

Presenting claim for members of the Order of Railway Conductors who performed similar service, the representatives of the Order of Railway Conductors were informed by the management, because of the fact that the Order of Railway Conductors did not hold rights of representation as a craft, they (the management), could not consistently entertain claims for employes from the Order of Railway Conductors and therefore denied claims.

The Facts that the First Division National Adjustment Board has ruled that performance of such service is a violation of the working contract and has ruled that all employes be compensated for such service it is contended that Conductor Wilton and other men listed in exhibit "A" have right to choose own representatives to be represented under the contract. It is requested that the board rule that these employes be compensated for the service performed.

All data contained herein has been submitted to the management.

Oral hearing not required unless carrier so desires.

CARRIER'S STATEMENT OF FACTS: This claim in an attempt to revive Award No. 11201—Docket No. 17942, First Division, National Railroad Adjustment Board, a case in which it was admitted that the award has been "fully satisfied". The Carrier was notified under date of October 23, 1947 by the Brotherhood of Railroad Trainmen, the organization which originally progressed Docket No. 17942 to the National Railroad Adjustment Board covering claims for similar service, that all claims were fully satisfied and case closed out. Letter to Mr. P. M. Shoemaker, General Manager, from Mr. J. P. Mills, General Chairman, Brotherhood of Railroad Trainmen, reads as follows:

"This will acknowledge receipt of your letter of October 22, 1947, File 013—Award No. 11201—Docket No. 17942.

The amounts shown in the letter are correct and after these amounts have been paid, Award 11201—Docket No. 17942 is fully satisfied and you will please consider case as closed out."

At the time of the above advice to the Carrier that Award 11201 was fully satisfied and the case closed, the Brotherhood of Railroad Trainmen represented, and still represents, the Conductors on this property.

Under date of November 5, 1947, T. E. Fitzgerald, General Chairman of the Order of Railway Conductors of America, wrote to General Manager P. M. Shoemaker, protesting that certain conductors had not been compensated in accordance with Award No. 11201—Docket No. 17942. Mr. Shoemaker on December 17, 1947, advised General Chairman Fitzgerald as follows:

"This case was handled before the First Division by the Trainmen. A sustaining decision was given. In accordance with past practice, the Trainmen then instituted their detailed claims in relation thereto.

These claims were paid, and we hold letter from the Trainmen's Organization indicating that the Award has been satisfied in full.

Under the circumstances it is not clear how we can consistently entertain claims from the Order of Railway Conductors, who do not now represent this craft under the Railway Labor Act, under the decision in Docket 17942."

POSITION OF CARRIER: It was not until after Award 11201—Docket No. 17942 was marked "satisfied" and "closed" that the Order of Railway Conductors of America was made claim for Conductor J. J. Wilton and other Conductors. As a matter of fact, it was not until February 24, 1948, that the Conductors' Committee made the following submission:

"Statement of Claim: This submission involves claim of Conductor J. J. Wilton and crew for an additional day at yard rate on February 23, 1943. On the above date this crew set cars out at Secaucus and moved balance of train to Hoboken and returned with engine and caboose to Secaucus.

Also an additional day at yard rate for all men who performed similar service subsequent to February 23, 1943 and who were not compensated under First Division National Railroad Adjustment Board Award No. 11201."

It is seen from the information shown above that a period of over one year elapsed, that is, from February 12, 1947 to February 24, 1948, after Award No. 11201—Docket No. 17942 was handed down by the First Division, National Railroad Adjustment Board, before the Conductors' Committee submitted a formal claim in this case, after the Award was acknowledged as satisfied and the case closed.

The First Division of the National Railroad Adjustment Board has in numerous awards held that a claim for asserted infractions prior to the specific date named in the claim will not be sustained. Also, that where no complaint was presented by employes after considerable time had elapsed from the date of occurrence on which alleged complaint or claim was made, the Board has consistently held that claims are not valid prior to date first presented to Carrier. The following from First Division Awards:

"The protest is sustained but time claims will be denied owing to procrastination in presenting it."

Award No. 4646

"While under the contract, no limitation is placed on the right to register protest, and to assert claims, the old true rule, applicable to any claim before any tribunal, that reasonable diligence must be exercised by the claimant especially when delay is prejudicial to the other party to the controversy cannot be ignored."

Award No. 5821

"The rule is based on salutary principle universally applied by all tribunals having to do with settlement of controversies that the party against whom the claim is asserted must have reasonable notice that the other party claims a violation."

Award No. 7239

"Furthermore, no claim was submitted to the Carrier for conference until July 27, 1937, this being subsequent to the date (June 3, 1937) run was discontinued, it is therefore held that an affirmative award is not warranted."

Award No. 3523

"It is held that claims are valid where it be shown work was performed forming basis of claim from date protest or claims were

filed with Carrier, claims for retroactive adjustment for dates prior to filing protest or claim with the Carrier are denied."

Award No. 10889

To sustain the claim set up herein would violate the principles established by the above mentioned Awards, and many other Awards of the First Division, where the Board declined to grant retroactive applications.

This is particularly true here, where the Organization has acknowledged without qualification that the Award relied upon has been fully satisfied and the case closed.

Furthermore, the instant case violates the salutary principle frequently enunciated by this Board that claims may not be split.

Except as to Conductor Wilton on one date, it is not shown that there have been any violations of the character complained of before or since Award 11201 was acknowledged as fully satisfied and closed, and the Carrier denies that there were any.

No dates or instances of alleged violation have been presented to the Carrier and the claim fails for the further reason that it is vague and indefinite. (Awards 7206, 7218, and 10250, First Division.)

Since it has been acknowledged by the Organization that made the claim in Award 11201 that the Carrier satisfied all claims under Award No. 11201, as evidenced by the above quoted letter to Carrier under date of October 23, 1947, the claim herein presented by the Conductors' Committee is without foundation and should be denied.

Carrier affirmatively states that the substance of all matters referred to in the foregoing has been discussed with the Committee and made part of the particular question in dispute.

Oral hearing is not desired unless the other party to this dispute requests such hearing.

(Exhibits not reproduced.)

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe 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 waived hearing thereon.

On the basis of the record, the Division finds and concludes:

(1) Objection that the subject employes are not entitled to representation in the handling of grievances by other than the organization holding the contract is without substance. See Award No. 14400 and others cited therein.

(2) No time limit by contract being applicable to the instant claim, and there having been no unconscionable delay in handling, nor any prejudice resulting therefrom, under all the facts and circumstances of record, said claim does not constitute a stale demand.

(3) Docket No. 17942, Award No. 11201, covering "all men performing similar service subsequent to February 11, 1943", was reasonable notice to the carrier of prospective application of the protest of future claims, and

time claims based thereon do not constitute "split" claims, nor involve retroactive adjustment of monetary demands, where dispute results only from differences over satisfaction of applicable award.

(4) Acknowledgment and satisfaction relied on for barring claims should reasonably show settlement applicable to the disputed claim in order to constitute a bar, where the facts presented otherwise support the claim.

(5) The claim of Conductor Wilton for an additional day at yard rate on February 23, 1943, and on other days he performed like service subsequent to February 23, 1943, is allowable since it is affirmatively shown that the claim covers service identical to that performed by Conductor Jones on the same property and compensated for under sustained Award 11201 which is controlling on this property.

(6) Since (a) the carrier denies there are other unsatisfied claims, (b) factual data is not presented to show the type and character of other alleged violations as of any particular date, and, (c) it is impossible to tell from the record that the claims of one or more of the employes named in exhibit (A) were not properly closed out in settlement with the General Chairman of the Brotherhood of Railroad Trainmen, the claim for compensation on their behalf is too vague, indefinite and uncertain to support a sustaining award.

(7) That portion of the claim for check back of time slips is not properly before the Division.

AWARD

Claim of Conductor J. J. Wilton sustained in full. Claims of other named persons dismissed without prejudice. Claim for check back of time slips denied.

BY ORDER OF FIRST DIVISION
NATIONAL RAILROAD ADJUSTMENT BOARD

ATTEST: (Sgd.) W. C. Frohning
Acting Executive Secretary

Dated at Chicago, Illinois, this 13th day of June, 1951.