

Award No. 2863
Docket No. 2759
2-NPTCO-SMW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)**

**THE
NORTHERN PACIFIC TERMINAL COMPANY OF OREGON**

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement Sheet Metal Worker Local Chairman Frank Madonna was improperly disciplined for carrying out his duties as a Local Chairman.

2. That, accordingly, the Carrier be ordered to compensate Local Chairman Madonna for all time lost for this improper suspension.

EMPLOYEES' STATEMENT OF FACTS: Frank J. Madonna, hereinafter referred to as the claimant, was employed by the Northern Pacific Terminal Company of Oregon, hereinafter referred to as the carrier, as a sheet metal worker at Portland, Oregon, on June 30, 1949. Claimant was, at the time of suspension, and is the duly elected local chairman of the sheet metal workers representing the employes of that craft.

Claimant is regularly assigned to the 7:59 A.M. to 3:59 P.M. shift Sunday through Thursday with Friday and Saturday as rest days.

On Friday, July 20, 1956, at approximately 8:10 A.M. Sheet Metal Worker O. L. Nearing called the claimant by telephone to register a complaint with him as the local chairman. Mr. Nearing advised that he was subject to being unjustly dealt with due to having read a draft of a letter written by Mr. F. J. Olney (sheet metal worker lead mechanic and foreman) to the effect that he (Nearing) was to be disqualified on the position he bid in before he had started to work the job as lead workman.

The claimant in the capacity of local chairman reported on the property for the purpose of discussing Mr. Nearing's complaint with Mr. F. J. Olney,

FINDINGS: The Second 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 were given due notice of hearing thereon.

Without elaborating the details from the transcript of hearing, we conclude that the carrier's decision to penalize the local chairman was improper. This is because the issue between the two parties is much greater than the charge made against him. The real dispute existed before 9:20 a.m., July 20, 1956. That occasion was just one skirmish in the larger struggle both company and union have been making to dominate the other.

Neither party comes here with clean hands and we are constrained to restore both parties to their original status. There has been no showing that the Union or the local chairman succeeded in penalizing the relief foreman as implied by the comment, "Remember it won't be \$25.00; it will be much more." With no penalty against the relief foreman, there should be no penalty against the local chairman.

AWARD

The claim is sustained as per the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of May, 1958.