

Award No. 3715

Case No. 5535

2-HBL-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

Upon failure of the Division to agree upon procedural steps and upon its having deadlocked on the question of docketing this dispute, the Labor Members invoked the services of the National Mediation Board for appointment of a referee for the purpose of breaking the deadlock on the docketing of the dispute and said Board appointed Mortimer Stone as referee to sit with the Division as a member thereof to make decision thereon.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

HARBOR BELT LINE RAILROAD

DISPUTE:

Following the usual procedure System Federation No. 114 gave notice to the Division of intention to submit an ex parte submission involving the following dispute between the Harbor Belt Line Railroad and the carmen of System Federation No. 114, to wit:

1. That performance of work by Pacific Fruit Express Employees on cars in transit, permanently or temporarily, on Harbor Belt Line Railroad premises, is work belonging to employees of the Harbor Belt Line Railroad and who are amply covered by Agreement between Harbor Belt Line Railroad and its Employees who are represented by System Federation No. 114, Railway Employees' Department, American Federation of Labor, and which work is now being performed by Pacific Fruit Express employees in violation of Rules 20, 21, 39 and paragraph (b) of Rule 41 of aforementioned Agreement.

2. That Carrier improperly transferred and assigned the performance of said work to Pacific Fruit Express employees who are not covered by any agreement on the Harbor Belt Line Railroad, and are performing said work to the deprivation of Harbor Belt Line Railroad Employees, as represented by System Federation No. 114.

3. That accordingly the Carrier be ordered to cease and restore said work to Harbor Belt Line Railroad Employees in view of the fact that Harbor Belt Line Railroad employees have a recognized

agreement, and the employes of the Pacific Fruit Express Company do not have such an agreement on the Harbor Belt Line Railroad property.

Thereafter such submission was tendered to the Division and the Harbor Belt Line Railroad, the carrier named therein, duly tendered its submission, in which it contended:

1. That the Board is without legal authority to render an award in the absence of proper notice to all parties involved;

2. That the dispute is not within the jurisdiction of the Board because it was not handled in the usual manner up to and including the Chief Operating Officer of the carrier;

3. That the dispute should be dismissed by the Board in that it has been abandoned under time limitation and related rules of the collective agreement; and,

4. That there has been no violation of any rule of the collective agreement in effect between the parties.

Following receipt of said submissions and at a meeting of the Division the following motion was made and seconded:

"Motion duly made that Case No. 5535 HBL-CM, be docketed and set down for hearing".

Thereupon a proposed amendment to include giving notice to certain third parties failed to carry and the original motion was put to vote and failed to carry because of a tie vote.

It would appear that the issue of docketing is properly before the Division, and that is the only issue on which the referee is authorized to participate as a member thereof.

So far as appears the case was regularly referred to the appropriate Division pursuant to the provisions of the Railway Labor Act. The docketing of the case is not the acceptance of jurisdiction over issues presented but only the acceptance of the submissions from which jurisdiction and other issues may be determined. Until the case is docketed it is not before the Division for consideration of any of the facts or issues presented in the submissions and that is the first and necessary step before they may be considered.

AWARD

The dispute should be docketed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March 1961.