

Award No. 2806

Case No. 3794

2-GN-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

Upon failure of the Division to agree upon its jurisdiction to docket, hear and decide this case submitted by the Railway Employees' Department, AFL-CIO, The National Mediation Board appointed Mr. James P. Carey as referee, to break the deadlock, as provided in Section 3, First (L) of the Railway Labor Act.

Following is the case in question, the opinion and award of the Second Division with Referee Carey sitting as a member thereof:

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Coach Cleaners H. L. Matthews and Walter J. Couper were improperly denied the right to work on January 1, 1957.

2. That accordingly the carrier be ordered to compensate the aforesaid employees each in the amount of eight (8) hours pay at the applicable time and one-half rate for January 1, 1957.

OPINION OF THE DIVISION: In an ex parte petition, the federation alleges that the carrier violated the current agreement by improperly denying two coach cleaners the right to work at Vancouver, B.C., on January 1, 1957, and requests oral hearing. The carrier's submission discusses the merits of the claim, questions the Board's jurisdiction on territorial grounds, and also asks oral hearing.

The Division has deadlocked on the question of docketing the case, and that is the sole issue to be determined at this time. The labor members contend that in processing the dispute to this Board, petitioner has satisfied conditions precedent imposed by the controlling agreement, the Railway Labor Act and the rules of procedure of the Board as set forth in Circular No. 1 of October 10, 1934, and therefore the dispute should be docketed, oral hearing granted as requested by both parties and the issues determined. The carrier members take the position that docketing the dispute would be a

futile act for the reason that the claim is founded on an issue that arose outside the territorial limits of the United States and that it must be ultimately dismissed for that reason, citing several awards of the First Division.

The Railway Labor Act provides that disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, which have not been adjusted by discussion on the property in the manner provided, may be referred by the parties or either of them to the appropriate division of the Board. In the instant case it is unquestioned that the organization has fulfilled these requirements of the Act.

Circular No. 1 of the Board provides that "no 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." Since it appears that the matter has been handled in accordance with the provisions of the Act the implication would seem to be that the petition should be docketed and considered. It is also noted that Circular No. 1 provides that "oral hearings will be granted if requested by the parties or either of them." As previously stated, both parties have requested oral hearing. Under the circumstances, summary dismissal of this claim before the parties have had a full opportunity to be heard on all of the issues involved would be premature. Summary dismissal on a jurisdictional ground such as is raised here ought to be considered with great caution and the power exercised only in clear and unmistakable circumstances. The instant claim is based on an alleged violation of the current agreement which the writer has not seen. It might well be that upon full hearing more adequate light will be shed on the jurisdictional question, particularly in view of the fact that the locale of the instant dispute is so closely situated to the carrier's main line. The reasoning in our Award 1639 is pertinent to the question now before us and we see no valid reason why it should not be adhered to in this instance.

As noted, the carrier relies on First Division Awards 11149, 11150, 11151, 14082 and 915. In the first four of these, claims for compensation were dismissed because they arose in Canada and the Division held it was without jurisdiction. In Award 915 a claim was dismissed on the ground that the carriers involved were not subject to the Interstate Commerce Act. It will be noted however, that in all of those cases the dispute was docketed by the Division and the question of jurisdiction determined thereafter. Insofar as the specific question of docketing is concerned, those Awards support the view that the instant dispute should be docketed.

AWARD

The Division shall docket this case.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of March, 1958.