

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 employees 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.

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

INTERPRETATION NO. 1 TO AWARD NO. 2863

DOCKET NO. 2759

NAME OF ORGANIZATION: System Federation No. 105, Railway Employees' Department, AFL-CIO (Sheet Metal Workers).

NAME OF CARRIER: The Northern Pacific Terminal Company of Oregon.

QUESTION FOR INTERPRETATION:

"In view of the evidence of record showing the imposition of penalty against the Relief Foreman in connection with matters which likewise resulted in penalty against the Local Chairman, the Board is respectfully and formally requested to interpret the Award in the light of its own words—'Neither party comes with clean hands and we are constrained to restore both parties to their original status,' and to answer the question which has arisen: How can the Award mean that the penalty against the Local Chairman is to be cancelled while the penalty against the Relief Foreman stands?"

Upon application of the carrier involved in the above Award, that this division interpret the same in the light of the dispute between the parties as to its meaning and application, as provided for in Section 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

This division of the National Railroad Adjustment Board has consistently exercised its statutory authority within prescribed limits and according to procedure which has been found practical.

For instance, new evidence may not be presented at referee hearings, awards are based on findings of whether or not rules have been violated, we decide only the issue presented which was progressed on the property, and rehearings have been refused on the basis of the Railway Labor Act which makes our awards final and binding.

In our findings in Award 2863 it was made clear to the parties that there had been no showing that relief foreman Olney had been penalized. The pending request for interpretation and answer thereto, would indicate that the parties now are in dispute as to whether "Relief Foreman Olney was fined \$224.34 . . . (and) had been expelled from (the) organization." or "chose not to continue his membership in the organization."

The membership question was not stressed in the original submission and as new evidence was not properly admissible even collaterally, at the referee hearing. Now, on a request for interpretation, still additional facts are presented which were not presented originally or during the progress of the claim on the property. Consequently, we have no authority in the premises and refuse to rehear a case under such circumstances.

Our original finding that "with no penalty against the relief foreman, there should be no penalty against the local chairman", only went to the question of a fine, because we had no membership or expulsion question raised in the submission.

This Board interprets Award No. 2863 to mean that the penalty fine against the relief foreman which has not been collected, should not be collected and with no penalty against him there should be no penalty against the local chairman.

Referee D. Emmett Ferguson, who sat with the Division as a member when Award No. 2863 was adopted, also participated with the Division in making this interpretation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of February, 1959.