Award No. 3093
Docket No. 2926
2-GN-CM-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Thomas A. Burke when award was rendered.

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

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 employes each in the amount of eight (8) hours' pay at the applicable time and one-half rate for January 1, 1957.

EMPLOYES' STATEMENT OF FACTS: At Vancouver, B. C., the carrier on Sundays prior to and after January 1, 1957, employed two coach cleaners on the first shift, three coach cleaners on the second shift, and no coach cleaners on the third shift.

On January 1, 1957, the carrier reduced the force to one coach cleaner on the first shift, one coach cleaner on the second shift, and no coach cleaners on the third shift.

The claimants were not permitted to work on the date in question.

The dispute was handled with carrier officials designated to handle such affairs, all of whom declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is submitted that the facts show that the carrier employed two coach cleaners on the first shift, three coach cleaners on the second shift, and no coach cleaners on the third shift on Sunday, which means that they, under Rule 11(b) C reading:

> "On positions which are filled seven days per week any two consecutive days may be rest days with the presumption in favor of Saturday and Sunday."

on management as to the number of employes who may or may not be worked on such holidays. Such restrictions cannot be added to the schedule by Board dictate.

II. Carrier submits, that since claimants are employed as coach cleaners in Vancouver, British Columbia, Canada, your Board has no jurisdiction in the instant case. See First Division Awards Nos. 915, 11149, 11151 and 14082.

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.

Parties to said dispute were given due notice of hearing thereon.

The claimants contend that they were improperly denied the right to work on January 1, 1957. There is no question that they did not work on that New Year's Day but they were paid holiday pay at the standard rate, as provided for in the agreement.

The carrier contends, among other things, that since the claimants are employed in Canada the National Railroad Adjustment Board has no jurisdiction.

The Railway Labor Act, among other things, sets up the National Railroad Adjustment Board, defined its jurisdiction and its powers and provided a method of orderly procedure. The carrier in the instant case certainly comes within the definition of the term carrier, as provided in the Act, and likewise the employe claimants fit the definition of "employee" as contained in the Act.

Does the Board lose jurisdiction because the claims arose in Canada? In Awards 11149, 11150 and 14082 of the First Division it was held that the Board had no jurisdiction. While these three awards are not to be lightly regarded we find no reason for the decision given other than "that this claim arose in the Dominion of Canada".

We believe that this Division has jurisdiction. In the Railway Labor Act it is provided that all disputes between a carrier and its employes shall be handled in accordance with the requirements of this Act. And it provides for duly designated labor organizations to represent employes in accordance with the requirements of the Act. It should be noted that this claim was brought to this Division not by the employes who reside in Canada but by System Federation No. 101, Railway Employes' Department, AFL-CIO (Carmen), a legal entity in the United States.

It does appear from a reading of the Administration of the Railway Labor Act by the National Mediation Board on page 8 that the National Mediation Board has consistently held that the only employes of common carriers by rail who are eligible to participate in elections conducted under its auspices were those who actually worked within the continental United States or its territories. The National Mediation did hold as quoted on page 8, as follows:

> "There does not appear to the Board to be any constitutional impediment on the power of Congress to extend the rights, privileges, and duties of the Railway Labor Act to employees based in foreign countries employed by United States carriers by air; but, in the opin-

ion of the Board, the act as it presently exists does not grant such rights. The Board fails to find any specific direction in the act, as amended, permitting it to extend its jurisdiction beyond the continental limits of the United States and its territories."

Regardless of that, the National Mediation Board has no right to determine the jurisdiction of the National Railroad Adjustment Board. In addition, we should like to point out that the author of the Administration of the Railway Labor Act, after citing the language above-quoted, goes on to say:

> "It should be noted that the determination reached by the Board in that case was limited to its **jurisdiction** under section 2, ninth, of the Railway Labor Act. **It did not find that it was divested of its mediatory jurisdiction involving disputes covering wages, hours, and conditions of employment between employees and an air carrier subject to the act."**

We think it is extremely important to note that in addition to the provisions of the Railway Labor Act the **agreement** between the carrier and the organization spells out how disputes and grievances shall be handled and provides that unresolved disputes on the property may be referred to the National Railroad Adjustment Board, and this agreement was voluntarily entered into by the parties and embraces **all employes** who are members of the organization.

And so, regardless of whether or not the Railway Labor Act gives jurisdiction to this Division in this case, surely the parties by their voluntary agreement may place themselves under the jurisdiction of the National Railroad Adjustment Board. This they have done and so we find that this Division has jurisdiction of this dispute.

Coming to the merits of this claim, it is to be noted that in seventeen other cases involving the same parties and concerning the same dispute this Board held that the claim was without merit, and so this claim should be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of January, 1959.

DISSENT OF LABOR MEMBERS TO AWARD NO. 3093

This award is based on the erroneous findings in Awards Nos. 3023 to 3039, inclusive, wherein it was held that the claims were without merit. As stated in our dissent to those awards this same question between the same parties was considered by this Board in Awards Nos. 2378 to 2383, inclusive, and in each instance the claim was sustained. There is nothing present in the instant case to justify the denial award.

/s/ James B. Zink
/s/ R. W. Blake
/s/ Charles E. Goodlin
/s/ T. E. Losey
/s/ Edward W. Wiesner