

Award No. 5186
Docket No. 5376
2-KCT-FT-'67

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

KANSAS CITY TERMINAL RAILWAY COMPANY

vs

**INTERNATIONAL ASSOCIATION OF MACHINISTS
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION
BROTHERHOOD OF RAILWAY CARMEN OF AMERICA
INTERNATIONAL BROTHERHOOD OF FIREMEN, OILERS,
HELPERS
ROUND HOUSE AND RAILWAY SHOP LABORERS**

DISPUTE: CLAIM OF PETITIONER:

"Statement of Claim: Claim of the Kansas City Terminal Railway Company that under the provisions of Section 10 (b) of the Union Shop Agreement dated February 12, 1953 it is not contractually obligated to grant the respondent Organizations a check-off of members' union dues through payroll deduction without compensation to the Carrier to offset the additional expense incurred."

EMPLOYES' STATEMENT OF FACTS: The disagreement between the carrier and the organizations to which Mr. Llewellyn's letter apparently refers is one which has arisen in the course of negotiations on a proposal by the organizations to make an agreement providing for the check-off of union dues without charge to the organizations or the employees. That proposal by the organizations has been the subject of conference between the parties and has been the subject of extensive mediation by the National Mediation Board in NMB Case No. A-6549.

Although the provisions of Section 10(b) of the Union Shop Agreement dated February 12, 1953 are regarded by the organizations as very pertinent to the negotiation of the agreement the organizations have proposed, there is no contention by the organizations that the carrier is obligated by contract currently to make any deduction of union dues. Consequently, there does not exist any dispute referable to the National Railroad Adjustment Board. Mr. Llewellyn's purported submission of such a dispute to your Board is merely a device seeking for an advisory opinion from your Board which your Board has no jurisdiction to render.

POSITION OF EMPLOYES: On the basis of the foregoing Statement of Facts, it is evident that your Board is without jurisdiction in this dispute.

3. Section 10 (b) requires additional negotiations between the parties on the material elements of a check-off agreement, and in these negotiations contemplated by Section 10 (b), both parties are uninhibited by any previous contractual commitments.

4. In any event, Section 10 of the Union Shop Agreement does not require the parties to literally comply with the remarks and recommendations of Emergency Board No. 98.

5. The prevailing practice in the railroad industry is to agree that the carrier may collect a fee for deducting dues on its payrolls and transmitting same to the organization, and this practice truly indicates our Union Shop Agreement, similar to the union shop agreements in effect on many properties, does not embody the contractual commitments relied upon by the respondent Organizations.

In view of the above, the Board is respectfully requested to find for the Carrier on the issues presented to it.

It is hereby affirmed that all of the foregoing is, in substance, known to the Organizations' representatives.

Oral hearing is waived.

(Exhibits not reproduced.)

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

Section 10 of the parties' Union Shop Agreement, dated February 12, 1953, reads as follows:

"Section 10.

(a) The Carrier shall periodically deduct from the wages of employees subject to this agreement periodic dues, initiation fees, and assessments (not including fines and penalties) uniformly required as a condition of acquiring or retaining membership in such organization, and shall pay the amount so deducted to such officer of the organization as the organization shall designate; Provided, however, that the requirements of this subsection (a) shall not be effective with respect to any individual employee until he shall have furnished the carrier with a written assignment to the organization of such membership dues, initiation fees and assessments, which assignment shall be revocable in writing after the expiration of one year or upon the termination of this agreement, whichever occurs sooner.

(b) The provisions of Subsection (a) of this Section shall not become effective unless and until the carrier and the organization shall, as a result of further negotiations pursuant to the recommendation of Emergency Board No. 98, agree upon the terms and conditions under which such provisions shall be applied; such agreement to include, but not be restricted to, the means of making said deductions, the amounts to be deducted, the form, procurement and filing of authorization certificates, the frequency of deductions, the priority of said deductions with other deductions now or hereafter authorized, the payment and distributions of amounts withheld and any other matters pertinent thereto."

Section 10 (b) provides for further negotiations if and when the parties desire to institute a check-off system of paying union dues.

Since both the Petitioner and Respondent agree in the record that at the time this case was submitted to this Division there was no existing contractual obligation requiring the Carrier to check-off union dues, and in view of the unambiguous language in Section 10 (b) requiring further negotiations to institute a check-off system of paying union dues, we must find the Carrier, who is the Petitioner here, is not obligated to institute a union dues check-off system under the present existing agreement rules.

AWARD

Claim of Carrier sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 9th day of June 1967.