

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Frank M. Swacker, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: "Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that:

- (1) J. R. Hopkins, R. W. Cothorn, Wm. M. Christman, Jr., Roy Orr and Joseph McMillen employed as Ushers were improperly and unjustly dismissed from the service on November 18, 1938 without advice or cause, and
- (2) That J. R. Hopkins, R. W. Cothorn, Wm. M. Christman, Jr., Roy Orr and Joseph McMillen shall be restored to active service and compensated for all monetary loss sustained."

EMPLOYEES' STATEMENT OF FACTS: "A dispute has arisen between this petitioner Brotherhood, as the duly designated and authorized representative of the Clerical Office, Station and Store Employees including Ushers or Red Caps, and the Carrier named above, the details of which are hereinafter recorded.

"Said dispute has been handled in conference and by correspondence in accordance with the provision of the Railway Labor Act, amended June 21, 1934, with particular reference to—

Section 2 First;
Section 2 Second;
Section 2 Sixth and
Section 3 First (i) thereof.

"The two parties to said dispute have failed to reach an adjustment of said dispute and same is hereby referred to your Honorable Division of the National Railroad Adjustment Board, in accordance with the provisions of Section 3, First (i) of the aforementioned Act.

"The facts and circumstances out of which this pending and unadjusted dispute arose are as follows:

"(1) The Terminal Railroad Association of St. Louis in the operation of the St. Louis Union Passenger Station has employed and continues to employ in its service, a force of men commonly known and designated as Ushers and Red Caps, ranging in number from 50 to 100, whose duties consist of or include the carrying of passenger's hand baggage, assisting passengers at the station and other work as directed by supervisory forces of the Carrier.

case, why not do the only fair thing and reinstate these men to their former positions and seniority standing? If you will do this, we, no doubt, can come to some understanding covering the wage losses they have sustained since November 18, 1938.

'I shall be pleased to hear from you at an early date, and beg to remain,'

Our letter of February 27, 1939, to Mr. Dwyer:

'Your letter February 25, claims of Messrs. Hopkins, Cothorn, Christman, Orr and McMillan.

'The status of these five men was not a distinct and separate grievance as you claim, but was one of the principal issues involved in the execution of an agreement covering Red Caps. We insisted on the acceptance of our viewpoint in this connection as a condition precedent to execution of the agreement. This was clearly indicated in the correspondence that ensued and the conferences that were held prior to execution of the agreement. I am sure that local committeemen Banks and Woodery will bear out this statement. As a matter of fact, Mr. Banks talked to Mr. Wicks after the settlement and asked him to give consideration to the reemployment of one or two of these men strictly as a matter of leniency.

'We are not worried about our ability to defend our position. All we want to do is clarify the issues so that everybody concerned will know where they stand before we get to the Board in the event the case is not withdrawn.'''

OPINION OF BOARD: This case involves petition for reinstatement of five men in effect discharged. They are ushers or so-called red caps. For years they were not considered as employees of the carrier until recent decisions holding them to be such. When these decisions came down, steps were taken to organize them, and negotiations instituted with the carrier in question by the complainant organization, which satisfactorily established representation authority to obtain a working agreement. These men were discharged while the negotiations were on, but before they had resulted in any contract. Under the contract finally reached they would have been entitled to a hearing on charges before they could be removed from the service. Admittedly, however, the contract cannot be deemed retroactive and it, therefore, has no bearing.

The carrier challenges the jurisdiction of this Board to deal with the subject matter at all. It says that the only jurisdiction of this Board is to deal with disputes arising out of agreements subsisting between the parties at the time of the occurrence of the matter complained of. It says further that at common law it had the right to discharge any employee with or without reason.

We think this ground is too narrow. The Act itself does not limit the jurisdiction of the Board to disputes arising out of agreements. Paragraph 3 (i) reads:

"The disputes * * * * growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions * * * *."

There appear, therefore, to be cognizable by this Board, grievances other than such as might arise out of agreements. Just what they are it is unnecessary here to explore. In the instant case it is charged by the petitioner that they were discharged for their activity in organizing a union. Section 2 Fourth of the Act guarantees to employees the right to organize and prohibits carriers from questioning such right or interfering in any way with the organization of employees. To this extent the common law right of a carrier

to discharge an employe for any or no reason, in the absence of an agreement, is modified by a Federal Statute which prohibits such discharge because of unionization activity.

Although the petition here charges that the discharge was on account of union activity, there is not a particle of evidence offered to sustain the charge, which is expressly denied by the carrier; and the surrounding circumstances such as that organization was under way at the time, which indeed is the only evidential circumstance, are quite insufficient to warrant the inference that this was the cause of the discharge. On the other hand, there is a slight amount of evidence that would indicate the discharge was for other reasons.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

The facts do not sustain the complaint.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Ill., this 2nd day of August, 1939.