

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

LOCAL UNION 1460 OF THE AMALGAMATED ASSOCIATION OF IRON, STEEL AND TIN WORKERS OF NORTH AMERICA, KNUTE JOHNSON, ET AL.

DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY

STATEMENT OF CLAIM: Claim that Knute Johnson, Frank Karasiewicz, Stanley Matuscheak, Raymond Zimney, Alf K. Peterson, Clarence Gallberg, Joseph Eik, Vaner Carlson, Frank Zuke, Marvin Fox, and Marvin Peterson were wrongfully discharged and severed from their employment with the Duluth, Missabe and Iron Range Railway Company, and petitioners claim reinstatement for said employes in the service of said company, and payment of back wages since their wrongful discharges on the dates stated in the Affidavits submitted herewith.

STATEMENT OF FACTS: In accordance with Award No. 1186, this case was heard by the Third Division on January 16, 1941.

Knute Johnson, employed by the Carrier as a lineman, was charged with certain derelictions of duty on June 19 and July 11, 1937, during his assigned hours of duty. Investigations were held on July 21 and 23, 1937 in accordance with the provisions of the Agreement effective September 1, 1933, and on August 2, 1937, Johnson was dismissed from service for leaving work without permission and violation of rules.

Frank Karasiewicz, employed by the Carrier as an ore dock laborer, was charged with sleeping during his assigned hours of duty, night of August 30, 1937. At the investigation, August 31, 1937, Karasiewicz admitted the charge and was subsequently suspended from service for 30 days.

The claim of Stanley Matuscheak, Raymond Zimney (Simney), Alf K. Peterson, Clarence Gallberg, Joseph Eik, Vaner Carlson, Frank Zuke, Marvin Fox, and Marvin Peterson involves the right of temporary employes (ore dock laborers) to acquire seniority under provisions of Agreement dated April 1, 1937, between the Carrier and the Committee representing Ore Dock Laborers.

OPINION OF BOARD: The evidence of record discloses no adequate grounds for disturbing the disciplinary action of the Carrier. The claim of Knute Johnson and Frank Karasiewicz should be denied.

Under date of April 1, 1937, the Carrier and the Committee representing Ore Dock Laborers entered into Agreement reading:

"AGREEMENT BETWEEN THE
DULUTH, MISSABE AND NORTHERN RAILWAY COMPANY
and
COMMITTEE REPRESENTING ORE DOCK LABORERS EMPLOYED ON
MISSABE DIVISION DULUTH, MINNESOTA
April 1, 1937.

* * * *

1st—It is agreed that anyone hired for work on the Ore Dock after the date of this agreement, will not acquire any seniority except as provided for in the second paragraph of this agreement and that until seniority is acquired, the Railway Company can at its discretion, use such newly hired men as they may need from day to day without regard for the date hired or the date of first employment.

2nd—Due to the irregularity of the work on the Ore Dock, it is agreed that the seniority list of laborers will be limited to 135 men, this number may be maintained by the Railway Company selecting from the temporary men hired under this agreement, sufficient men to maintain a list of 135 men.

3rd—Whenever a new man is added to the seniority list, his seniority date will be the day he first worked as a temporary employe.

Accepted for Ore Dock Laborers

(Signed) Steve Landowski
Walter Konczak
Joseph Jamrock
Committee.

Accepted for the Duluth, Missabe and
Northern Railway Company,

(Signed) P. H. Van Hoven
Vice President."

Claimants Stanley Matuscheak, Raymond Zimney, Alf K. Peterson, Clarence Gallberg, Joseph Eik, Vaner Carlson, Frank Zuke, Marvin Fox, and Marvin Peterson were hired for work after April 1, 1937, and therefore had the status of temporary employes subject to provisions of the Agreement of April 1, 1937. This Agreement being controlling, the claim that these laborers were wrongly severed from employment should be denied.

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

That the claims will be denied for reasons stated in the Opinion.

AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 24th day of April, 1941.