

Award No. 15219
Docket No. CL-15579

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES
DULUTH, MISSABE AND IRON RANGE RAILWAY COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood (GL-5760) that:

(1) The Carrier violated the current rules and working conditions Agreement, particularly Rules 1, 33(b)-2, and others by its failure to call George W. Miller to work a vacancy on the third shift Ore Sorter position at Proctor, Minnesota on April 15, 1964, his day of rest.

(2) Claimant George W. Miller shall be compensated at the rate of pay of Ore Sorter at time and one-half for eight (8) hours for April 15, 1964.

EMPLOYES' STATEMENT OF FACTS: The Carrier maintains an ore yard for the handling and sorting of iron ore cars at Proctor, Minnesota, where consolidation of movement of iron ore by rail car from the mining area to Carrier's Iron Ore Dock is handled. Carrier maintains clerical positions, bulletined as Ore Sorter assignments seven (7) days per week on a three (3) shift operation, for the performance of work incidental to the Ore Sorter's position in the handling of the iron ore movement by rail through the Proctor Ore Yard.

Claimant Miller was regularly assigned 11:00 P.M. to 7:00 A.M. five (5) days per week to an Ore Sorter position with rest day relief provided for claimant's two (2) regularly assigned rest days. On April 15, 1964, the date of claim, the rest day relief employee who was regularly assigned to work the Ore Sorter assignment on one of claimant's days of rest, notified the proper officer of the Carrier that due to sickness he would not be able to report to work on his assignment. As result of the rest day relief employee laying-off sick, the Ore Sorter position on the date and shift claimed, was not filled by an employee of this Craft and Class, and the work of the position was performed by Yardmasters, Carrier employees not of this Craft and Class.

Claimant Miller was available at home for call to perform the work on the date claimed and was the proper incumbent to be used under the provisions

mitteeman, a leader in the proposed bolt, was suspended from office in the union on October 18, 1963. (Copy of the Duluth Herald news item dated Thursday, March 26, 1964 is attached and marked as Carrier's Exhibit A). (Copy of Grand Lodge Representative E. L. Roer's letter dated November 15, 1963 to all members of Lodges 412, 413 and 420, explaining the suspension of the Local Officers is attached and marked as Carrier's Exhibit B).

On April 15, 1964, the dissident group of employees remained away from work commencing with the first shift at 7:00 A.M. and throughout the day, alleging illness. During this period, the Carrier's supervisors took over the work of the "sick" employees and made every attempt to secure available employees to fill the vacancies caused by the employees off account alleged illness. Claimant Miller was assigned to an Ore Sorter position on a work week with Wednesday and Thursday as rest days. The supervisors were aware of claimant's activities and it was known that he would not have responded to work the circumstances.

The claim has been handled on the property in accordance with the time limit on claims agreement. Copies of the correspondence involved in the handling of the case on the property is attached and marked as Carrier's Exhibit C.

(Exhibits not reproduced.)

OPINION OF BOARD: In April 1964 Claimant occupied a regular third trick assignment of Ore Sorter at Proctor, Minnesota, where Carrier maintains a seven-day ore yard, sorting, and ore dock operation.

On June 11, 1964 Claimant filed the following claim:

"Allow one day at time and one-half at Ore Sorter rate for April 15, 1964 for not being called to work on my rest day when the regular relief man laid off."

In support of the claim, it is asserted that on the date in question the relief sorter notified the proper officer of the Carrier that due to sickness he would not be able to report to work on his assignment, and that the Ore Sorter position on that shift was not filled by an employee covered by the Clerks' Agreement. The facts of record do not support the claim.

On April 15, 1964, commencing with the first shift at 7:00 A.M., and continuing throughout the second and third shifts, a large number of clerical employees remained away from their assignments by calling in and reporting off "due to sickness."

It is crystal clear from the ample evidence submitted by Carrier that the unauthorized "sick strike" created an emergency which Carrier had to meet by using supervisory personnel in order to protect the requirements of the ore yard operation.

This Board has held in numerous decisions that greater latitude of judgment is allowed in emergency cases.

We are satisfied from the record before us that Carrier's officer acted in a prudent and good faith manner to meet the emergency, and we will therefore deny the Claim.

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

That the parties waived oral hearing;

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **THIRD DIVISION**

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1967.