

**NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION**

I. L. Sharfman, Referee

**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.

**OPINION OF BOARD:** On April 14, 1938, Mr. Henry Paull, attorney at law in Duluth, Minnesota, addressed to the Third Division of the Adjustment Board notice of intention to file, on May 17, 1938, an ex parte submission on behalf of Local Union 1460 of the Amalgamated Association of Iron, Steel and Tin Workers of North America, Knute Johnson, and ten other named individuals, as petitioners, alleging a violation by the Duluth, Missabe and Iron Range Railway Company, defendants, of the Agreement between the parties effective September 1, 1933 and entitled Rules for Ore Dock Employes. The gist of the complaint to be filed was that the specified individuals had been wrongfully discharged (Rule 8 of the Agreement, dealing with Grievances and Discipline, being particularly cited), and that the individuals involved were entitled to reinstatement with back pay from the respective dates of their wrongful discharges. When the carrier was notified by the Secretary of the Division of the petitioners' intention to file this ex parte submission, with a request that it file its submission within the same period, the carrier, under date of April 28, 1938, addressed a rather lengthy communication to the Division, in which, after suggesting that the Board decline to assume jurisdiction because the Amalgamated Association of Iron, Steel and Tin Workers of North America "is not a standard railroad labor organization," it set forth the facts and argued the merits of the dispute, but reserved the right, if the Board should assume jurisdiction, to file its formal and more complete submission.

It may be noted parenthetically, though possessing no controlling significance, that until August 6, 1940 the ore dock employes involved in this dispute were represented, upon certification of the National Mediation Board, by the Steel Workers Organizing Committee of the Committee for Industrial Organization, which negotiated an Ore Dock Schedule effective September 1, 1938 in place of the earlier Rules for Ore Dock Employes; and that on

August 6, 1940 the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees was certified by the National Mediation Board as having been "duly designated and authorized to represent" these ore dock employees.

The ex parte submission of the petitioners was duly filed on May 16, 1938, but the carrier was not again notified by the Division to file its formal submission, and the proceeding was not set for the hearing requested by the petitioners.

This failure to progress the proceeding in the usual manner resulted from a deadlock within the Division on the question of jurisdiction—it being the contention of the Carrier Members that jurisdiction over this dispute was vested by the Railway Labor Act in the Fourth Division rather than in the Third Division. On April 23, 1940 the petitioners requested the National Mediation Board to appoint a Referee to sit with the Third Division and determine this question of jurisdiction; and on May 20, 1940 the National Mediation Board advised the Division that pursuant to an opinion of the Attorney General of the United States the appointment of a Referee was lawful and appropriate in these circumstances. In due course the present Referee was selected by the Division to sit as a Member thereof for the purpose of disposing of this jurisdictional question.

The position of the Carrier Members that the Third Division is without jurisdiction in this dispute is based upon the following contentions: (1) that since ore dock laborers as such are not mentioned among the groups or classes of employees whose disputes are assigned for consideration by the Third Division, or by any other division, they must necessarily be embraced within the authority of the Fourth Division, which is assigned jurisdiction over disputes involving "all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions"; and (2) that these ore dock laborers are performing functions primarily related to water transportation, and that the Fourth Division is expressly given jurisdiction over "disputes involving employees of carriers directly or indirectly engaged in transportation of passengers or property by water."

(1) The jurisdiction of the Third Division specifically embraces disputes involving freight handlers, and it appears that the petitioners are engaged in the handling of bulk freight. There are numerous designations of employees which are not mentioned as such in Section 3, First (h), of the Railway Labor Act, but which are embraced none the less in the jurisdiction vested in the first, second, and third divisions. It would seem that the functions performed by employees are more important for determining this issue than the locale of their performance; but the record thus far made does not describe, except by vague use of names of positions in some instances, the nature of the duties performed by the employees involved in this dispute. Under these circumstances it is the opinion of the Board that the mere fact that ore dock laborers are not specifically mentioned among the groups or classes of employees over which the Third Division or any other division has jurisdiction does not, in and of itself, establish the jurisdiction of the Fourth Division; and that, from the standpoint of the first contention, the ex parte submission of the petitioners and the explanatory statement of the respondent establish a prima facie case for the assumption of jurisdiction by the Third Division.

(2) The record thus far made is equally inadequate to determine whether this dispute involves "employees of carriers directly or indirectly engaged in transportation of passengers or property by water." There is no evidence whatever concerning the nature of the facilities used or of the service rendered by the carrier, and the character of the duties performed by the petitioners must be gathered exclusively from the mere use of such terms as "lineman," "ore puncher," "wrenchman," "hoister," and "laborer" in affidavits, dealing entirely with facts bearing upon the merits of the dispute, which were incorporated in the ex parte submission. The evidence

is clearly insufficient for an affirmative holding that jurisdiction rests with the Fourth Division. On the other hand, the following considerations are pertinent: that the respondent is a carrier by railroad; that the petitioners are direct employees of this carrier by railroad; that the respondent and petitioners are carrier and employees within the meaning of the Railway Labor Act; that an agreement was in effect at the time of the alleged violations which concededly brought the dispute within the jurisdiction of the Adjustment Board; that neither party to the dispute has raised any question as to the jurisdiction of the Third Division; and that the proceeding has been pending on this basis before the Third Division since May 16, 1938. Under all these circumstances it is the opinion of the Board that, from the standpoint of the second contention also, the ex parte submission of the petitioners and the explanatory statement of the respondent establish a prima facie case for the assumption of jurisdiction by the Third Division.

These rulings are made without prejudice to a final determination by the Third Division as to whether or not it is vested with jurisdiction in this dispute. When the carrier has been afforded an opportunity to file its formal submission, and when, subsequently, a hearing has been held in conformity with the request of the petitioners, the Division will be free to dispose of the dispute either on the jurisdictional question or on the merits, as it may find appropriate, on the basis of a record adequate for these purposes.

**FINDINGS:** The Third Division of the Adjustment Board finds and holds:

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

That the ex parte submission of the petitioners and the explanatory statement of the carrier establish a prima facie case for the assumption of jurisdiction by the Third Division.

#### AWARD

The Third Division will handle the proceeding in conformity with the above Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 17th day of September, 1940.