

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: The claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the Clerks Agreement.

1. The Carrier violated the Clerks' Agreement when on May 4, 1949 and subsequent dates it assigned a Maintenance of Way employe to the operation of a diesel crane and what is known as a "shakeout" on the ore docks at Allouez, Wisconsin, thus depriving employes covered by the Clerks' Agreement of the right and opportunity to perform this work.

2. That the Carrier now reimburse the senior qualified employe first out on the extra list for each and every day that the diesel crane and shaker is used in the unloading of ore from ore cars at Allouez, Wisconsin.

EMPLOYEES STATEMENT OF FACTS: It came to the Employees' attention on the 1st of May, 1949 that the Carrier intended within a few days to place into operation on the ore docks at Allouez, Wisconsin, a shaker operated or run by a diesel crane. This shaker was to be used in unloading ore from ore cars. This was a new position which the Carrier intended to create for the purpose of mechanizing the unloading of ore.

This shakeout is a piece of equipment that is placed on top of a car of ore. A motor attached to this shakeout, when started, causes it to vibrate which in turn vibrates the car of ore and in this manner shakes the ore loose and it slides into the pockets. The operator who operates the diesel crane lowers the boom and picks up the shakeout and places it on the ore car. He then gets a signal from an ore employe to start the shaker in motion and also gets a signal to stop it when the car is empty. In other words, the crane operator controls the entire operation with the use of the levers from the cab of the crane. This shakeout actually unloads the ore, but it is set in motion by the crane operator.

This is the first record we have had of this new piece of equipment ever being used. Many years ago the ore was all unloaded by hand, but in later years several kinds of machines have been placed into operation, each of them partially eliminating the hand unloading. There are machines which open and close cars. These are quite an improvement over the days when this was all done by hand. It eliminated a lot of employes, but there was never any argument as to who was going to operate these so-called trapping

The Carrier holds, therefore, that your Board has only two alternatives in this case:

1. To follow the opinions previously expressed by you in Awards 616 and 1400 and remand the case for negotiation on the property, including if necessary or desired by any of the parties at interest, the invocation of the services of the National Mediation Board, or
2. If jurisdiction is assumed and award rendered in behalf of the claimants to deny any claim for compensation in a case based entirely on jurisdiction.

Exhibits not reproduced.)

OPINION OF BOARD: On May 4, 1949, the Carrier placed in operation on its Allouez Dock a machine designated as a "shakeout." It consists of a steel frame which fits over an ore car and by an electrically powered eccentric mechanism shakes the ore car causing ore which might otherwise stick to fall through the hopper into the ore bins. A locomotive crane is used to lift the "shakeout" onto the car and to provide the electrical power to operate it. The locomotive crane operates on the rails and, in addition to being used to operate the "shakeout" on the docks, was used off the docks to handle yard material and spilled ore. The position of crane operator was bulletined to maintenance of way employes. Claimant contends that it should have been bulletined to the "Ore Dock Employes Employed at Allouez Ore Docks," a group within the Clerks' Organization.

The scope rule of the Agreement between Carrier and its ore dock employes provides as follows:

"Effective June 15, 1947, these rules shall govern the hours of service and working conditions with following exceptions, of all Ore Dock Employes represented by the Brotherhood of Railway and Steamship Clerks employed upon Allouez Ore Docks of the Great Northern Railway Company:

Exceptions: General foremen, foremen, assistant foremen and clerks."

It will be noted by the foregoing rule that all ore dock employes at Allouez Ore Docks, except those specified, are brought within the scope of the Agreement. The positions listed as exceptions play no part in this dispute. Giving the scope rule the meaning usually attached to scope rules of this type, we are required to say that it includes all work on the Allouez Ore Docks customarily and traditionally performed by ore dock employes other than those excepted. The work of unloading ore cars is work belonging to ore dock employes under this Agreement. Prior to the use of the "shakeout," the work of breaking or shaking loose of frozen or wet ore was performed by hand with the aid of hand tools. The "shakeout" is clearly a substitute for this hand labor which was always performed in the past by ore dock employes. While employes of a craft cannot justifiably complain of the use of modern machinery to expedite the work of their craft and a consequent loss of positions resulting therefrom, a justifiable complaint does exist when the work remaining is removed from their agreement and placed under another. We think all the work of unloading ore cars on Allouez Ore Docks is reserved by the scope rule hereinbefore quoted.

The Carrier insists that a jurisdictional dispute exists between the ore dock employes and the maintenance of way organization. With this we do not agree. A jurisdictional dispute exists when the Carrier has not contracted with either of two or more crafts and a dispute arises as to which is entitled to perform the work. Where the Carrier has contracted with one or both parties to a dispute, no jurisdictional question is involved. It is then a matter of contract interpretation for this Board. The Carrier clearly con-

tracted with the ore docks employees at Allouez Ore Docks that such employees would perform all the work at the Allouez Ore Dock customarily and traditionally performed by them. Since the work performed by "shakeout" falls within that reserved to the ore dock employees, no jurisdictional question is presented.

The Carrier insists that the work of operating this locomotive crane belongs to maintenance of way employees. Whether or not the Carrier has contracted with the maintenance of way employees for the operation of this locomotive crane while working in conjunction with the "shakeout" is not before us in this dispute. The record shows that all crane operators' positions are not exclusively within the Maintenance of Way Agreement. All we say here is that Carrier contracted with the ore dock employees at Allouez Ore Docks for the performance of all the work of unloading ore. The work in dispute is a part of that work. The work performed by the crane operator while operating the "shakeout" on the ore docks is work traditionally and customarily performed by ore dock employees at Allouez Ore Docks and consequently it belongs to them. An affirmative award is required.

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 Employee involved in this dispute are respectively carrier and employee 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 violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of July, 1950.