

Award No. 7788
Docket No. CL-7652

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward A. Lynch, Referee

PARTIES TO DISPUTE:

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

GREAT NORTHERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that the Carrier violated the rules of the current agreement effective June 15, 1947, and letter agreement of July 16, 1951 reading as follows:

"We will arrange to use our handlers after all B&B employees have been taken care of in preference to hiring of outsiders.",

1. When on December 1, 1953 the Carrier refused to comply with this agreement,

2. That the Carrier now be required to compensate Elmer Koski, Evert Antilla, Walfred Hill, Edmund Herbert, Jr., Walter Bloomquist, John Raunio, Francis Marlow and Raymond Heino for December 1, 1953 and each and every day thereafter that they were not allowed to perform repair work on the dock and individuals outside of the agreement, exclusive of B&B Department employees, were used.

EMPLOYEES' STATEMENT OF FACTS: For some time prior to 1951 our Organization had been attempting to enter into an agreement with the Carrier providing that after all Bridge and Building Department employees had been taken care of that ore dock employees be given preference to repair work on the ore docks at Allouez, Wisconsin during the winter months. In the first part of July 1951 a conference was held between the General Manager and the General Chairman at which time this matter was discussed. After the conference, on July 9, 1951, the General Chairman wrote the General Manager as follows:

St. Paul, Minn.
July 9, 1951
File 0-53-4

"Mr. T. A. Jerrow, General Manager
Great Northern Railway Company
311 Alworth Building
Duluth 2, Minnesota

Dear Sir:

In conference with you the first of last week we informally discussed the question of ore handlers being given preference in

sets forth the intent of the July 16, 1951 letter, and this letter was written prior to there being any dispute on the part of the Employees as to the intent of the one of July 16th, so that it must be clear indeed that there was no question whatsoever in Mr. Jerrow's mind as to what he had agreed to as to the use of Ore Handlers to supplement B&B forces.

Again, in his letter of September 24, 1951, heretofore quoted, he again states, in part, as follows:

"As I advised you, we will give ore dock employees preference over hiring of outside help; that is, new employees who have not worked for the railroad before, but Master Carpenter will continue to use employees from the various crafts who have been laid off, when the supply of B&B men has been exhausted."

Here again he confirms his understanding of the intent of the original letter of July 16, 1951 directly in line with his letter of August 7, 1951 addressed to Superintendent Hooker.

The Carrier holds that there cannot be any better evidence produced than the contents of these two letters of August 7, 1951, and September 24, 1951, written by Mr. Jerrow defining the intent of his own letter of July 16, yet irrespective of that the Employees in this case are, in effect, attempting to tell Mr. Jerrow what he meant by his own letter. Possibly, the letter of July 16, 1951 might have been more explicit in its terms and gone into greater detail, but the intent of the letter was very clear to the writer thereof as evidenced when within less than a month thereafter he did go into detail as to its intent in writing to another company officer.

We believe the language of your Board in Award 1248, with Referee Ernest M. Tipton, pertinent to this case. In that Award you stated:

"The Board is of the opinion that the Carrier's contention must be sustained. We are cited no rule of the controlling agreement that has been violated, nor does the record sustain any understanding in effect that would support the claim. This Board must construe and apply agreements as the parties make them, and it has no authority to change them even to avoid inequitable results from their application.' "

This we hold is the situation herein. There has been no rule of the controlling agreement violated and the record does not sustain any understanding based upon later correspondence which would support the claim herein, in view of which we hold your Board cannot do other than deny this claim.

It is hereby affirmed that all data herein submitted in support of Carrier's Position has been submitted in substance to the Employees' Representatives and made a part of the claim.

(Exhibits not reproduced)

OPINION OF BOARD: On July 16, 1951, T. A. Jerrow, General Manager, Great Northern Railway Company, Duluth, Minn., sent a letter to F. A. Emme, General Chairman of petitioning organization reading:

"Your letter of July 9th, regarding using ore handlers for repair work on the Ore Docks during the winter months after all available B&B employees are used.

"We will arrange to use ore handlers after all B&B employees have been taken care of in preference to hiring of outsiders and presume you will have Local Chairman Denewith furnish Superintendent Hooker with the names and addresses of the employees desiring this work during the winter months."

The language used by the General Chairman in his July 9 letter includes the phrase:

"* * * the question of ore handlers being given preference in repair work on the docks during the winter months, that is, preference after all available Bridge and Building Department employees have been taken care of."

Thus far, we have Carrier, by its General Manager, and Organization, by its General Chairman agreeing, by an exchange of letters following a personal conference on the subject: (a) that ore handlers at the ore docks at Allouez, Wisconsin would be "given preference * * * after all available Bridge and Building Department employees have been taken care of" (Organization's letter); or (b) (Carrier's letter) "we will arrange to use ore handlers after all B&B employees have been taken care of in preference to hiring of outsiders."

Thus the matter stood for one month until August 16, 1951 when C. O. Hooker, Carrier's Superintendent, addressed Organization's Division Chairman Denewith after the latter had sent him a list of ore handlers interested in such repair work during the winter months. Hooker's letter concludes with this paragraph:

"It is my understanding that these employees are to be hired in preference to hiring outside help, we of course to be privileged to use employees from other departments if desired by the Master Carpenter and that he is to be granted the privilege of deciding just which of these employees he desires to employ. Some may not be adaptable to the kind of work on which they would have to be used."

And thus was the instant dispute formed. Organization claims the Emme-Jerrow conference early in July resulted in an agreement that Carrier would give preference to ore handlers for this repair work on the docks during the winter months "after all available Bridge and Building Department employees", while Carrier asserts its intent was to give "consideration to Ore Dock Employees in preference to hiring outsiders, but (it) cannot agree to the use of Ore Dock Employees in preference to the use of furloughed employees of other crafts as you suggest."

The dispute, at this point, turns on the word "outsiders". Carrier maintains "outsiders" to mean men "having no furloughed status from the railroad", while Organization holds the word "outsiders can only mean persons not covered by the (Clerks' Ore Dock) Rules' Agreement of June 15, 1947".

To properly evaluate these respective and divergent views, it is necessary to go beyond the Emme-Jerrow meeting early in July, and accept Organization's statement that "for some time prior to 1951 our Organization had been attempting to enter into an agreement with the Carrier providing that after all Bridge and Building Department employees had been taken care of that ore dock employees be given preference to repair work on the ore docks at Allouez, Wisconsin during the winter months. In the first part of July 1951 a conference was held between the General Manager and the General Chairman at which time this matter was discussed."

Organization maintains there was "absolutely nothing said about hiring any other employees in the correspondence leading up to the agreement, or the correspondence in connection with the making of this agreement, that made any exception whatever to this statement (they wanted to be given preference to this work after all available B&B Department employees had been taken care of)."

Organization further claims these ore dock employees "have a very short season in the handling of ore. They start late in the spring and they are generally cut off pretty early in the fall. Their employment period is short and they must find something to do in the winter months. Inasmuch as they

work on these docks in the loading and unloading of ore, they felt, and they still feel, that they should be given preference to repair work on the docks after the B&B Department employees are all taken care of. It was for that reason that we asked for this agreement."

Carrier points out that its General Manager wrote Organization's General Chairman on September 24, 1951 advising that its employment roster on the docks the prior winter (1950-1951) had been as follows:

B&B men	157
Brakemen	1
Firemen	10
Switchmen	16
Ore Dock Men	69
Station Clerks	9

Carrier states:

"Nothing further was heard from the Employees and furloughed employees from other crafts were used to perform B&B work during the 1951-52 (the winter immediately following the exchange of letters) and the 1952-53 season. At the beginning of the 1953-54 winter season, the third after the General Manager's letter of July 16, 1951, the Carrier used the following employees for B&B work:

"B&B employees	129
Ore Dock employees	47
Switchmen	23
Firemen	15
Clerks	6."

After a further recital of the language used in the exchange of letters, Carrier argues that there had been no meeting of minds and the General Manager had, on September 24, 1951, so notified the General Chairman before additional employees were hired, thus, there was no valid agreement between the parties, and the Employees' claim must fall.

Despite Organization's assertion that there "is no showing in the record that the Carrier ever used such 'outsiders' (workers without prior Carrier service) on the ore docks prior to the letter agreement", Carrier maintains that prior to the Forty-hour Week Agreement it was necessary for Carrier to go "outside of its employees in any branch of service" to hire additional employees (for such winter work) "from the open labor market. However with the reduction in earnings when limited to a straight 40 hour week, the ore handlers were more willing to accept such work, and in Mr. Jerrow's letter * * * his reference to 'outsiders' had reference to labor acquired from the open labor market and not to the use of Great Northern employees of any classification * * *."

Despite Organization's argument, it must be conceded that Carrier did include the phrase "in preference to the hiring of outsiders" in the July 16, 1951 letter of its General Manager.

If we are to concede in the instant case to Organization the right to unilaterally interpret its intent as well as is definition of the term "outsiders", then we must concede to Carrier the same right.

If we are to recognize Organization's right to seek for its ore dock members in the case before us a right to the B&B work in the winter months to the exclusion of Carrier's furloughed employees in other crafts or classes, then we must also recognize Carrier's right and obligation to deal with all its employees of whatever class or craft according to the several Agreements to which Carrier is signatory in a fair and impartial manner.

The two letters in question—from Organization dated July 9, 1951 and from Carrier dated July 16, 1951—did not constitute a fait accompli.

Organization's letter concludes with the phrase "I am sure that it would be to your advantage to give our group this concession." No past or present tense is here indicated.

Carrier's letter one week later, after stipulating the phrase "in preference to hiring of outsiders" states it presumes "you will have Local Chairman Denewith furnish Superintendent Hooker with the names and addresses of the employees desiring this work during the winter months."

Organization cites no Awards of this Division in support of its position, but it does cite a "principle laid down by the Supreme Court of Minnesota (which) tends to support the contentions of the petitioning Brotherhood in the instant dispute."

We have no right to sit in judgment on a decision of the Supreme Court of the State of Minnesota, but because Organization refers to it we must observe that it affirmed a lower court ruling that appellant, who had been laid off and registered on the "extra list", was bound by the Agreement then obtaining to seek permission of Carrier's officer and the Division Chairman before accepting other employment at the risk of surrendering his seniority rights. It certainly is not analogous to the issue in the instant case.

From the record in this case, a denial Award is indicated.

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 Employees involved in this dispute are respectively Carrier and Employees 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 1, and 2, denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 13th day of March, 1957.