

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Howard A. Johnson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the effective Agreement when, on March 15, 1954, it furloughed Bridge and Building employees Kenneth J. Konkell, Victor Siminic, Francis A. Pilon, Clarence DeMarse, Orville A. Olsen, Lester W. LaMarch, Glen M. Meyer, Isadore Casey, Anthony Vardian, Joseph Kutches, Peter Geb, Clarence Martin, Frank Smokovich, Donald W. Swanson, Robert A. Bosk, Arnold Delvoux, Raymond J. Martineau, Arthur Sundquist, Stanley J. Kwarciany and Frank Gersich in force reduction and retained employees in service who held no seniority rights under the provisions of this Agreement;

(2) Each of the Claimants named in part (1) of this claim be allowed the exact amount each lost because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimants named in Part (1) of the Statement of Claim entered the Carrier's service in December of 1953 and January of 1954, thereby establishing a seniority date as B&B Mechanics and/or helpers as of the time their pay started as such and were assisting in the work of repairing the Carrier's ore docks at Escanaba, Michigan.

During the period December 1, 1953 to February 17, 1954, approximately 88 furloughed iron ore handlers, who held seniority under the provisions of the Carrier's Agreement with the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees, were also employed to assist in the performance of the aforementioned work. By an expressed Agreement provision, such employees were precluded from establishing a seniority status under the Agreement between the instant parties by virtue of such employment.

OPINION OF BOARD: The record indicates that the Brotherhood of Railway and Steamship Clerks is an interested third party to this dispute between the Brotherhood of Maintenance of Way Employees and the Carrier, and would be adversely affected by an affirmative award. It also suggests the possibility of such award.

Under authoritative federal court interpretations of Section 3, First (j) of the Railway Labor Act, as amended, notice to the interested third party 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 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;

That the Brotherhood of Railway and Steamship Clerks is interested in this dispute as a third party and is therefore entitled to notice of hearing pursuant to Section 3, First (j) of the Railway Labor Act, as amended;

That consideration of the merits should be deferred until notice is given to the interested third party.

AWARD

Hearing and decision on merits deferred pending due notice to the Brotherhood of Railway and Steamship Clerks to appear and be represented in this proceeding if it so desires.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 18th day of November, 1959.