

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 1858

: :
INTERNATIONAL BROTHERHOOD OF :
ELECTRIC WORKERS :
: :
and :
: :
DULUTH, MISSABE, AND IRON RANGE :
RAILWAY COMPANY :
: :
BROTHERHOOD OF RAILWAY, AIRLINE :
AND STEAMSHIP CLERKS, FREIGHT :
HANDLERS, EXPRESS AND STATION :
EMPLOYEES, Third Party at :
Interest :
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:

Members of Board

E. J. McDermott, Employee Member

Carl L. Signorelli, Carrier Member

Herbert L. Marx, Jr., Neutral Member
and Chairman

Award Dated: January 31, 1977

Appearances:

For the IBEW:

Edward P. McEntee, International Representative
Dennis J. Anderson, General Chairman

For the Carrier:

P. C. Carter, Special Representative
Kenneth C. Sutton, Manager, Labor Relations

For BRAC:

J. C. Fletcher, Assistant to International President
John F. Grady, General Chairman

FINDINGS AND AWARD OF NEUTRAL MEMBER

This Special Board of Adjustment was convened to hear and resolve a dispute between the International Brotherhood of Electrical Workers ("IBEW") and the Duluth, Missabe and Iron Range Railway Company (the "Carrier"). In an agreement effective December 3, 1976, and amended as to Paragraph H on December 17, 1976 the IBEW and the Carrier determined that the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees ("BRAC") "is a third party and has an interest in this dispute."

The Board consisted of E. J. McDermott, Employee Member; Carl L. Signorelli, Carrier Member; and Herbert L. Marx, Jr., Neutral Member and Chairman designated by the other Members. Paragraph H, as amended, of the Agreement to establish the Board calls for the neutral member to "render a decision or make such other rulings and decisions necessary to carry out the functions of the Board." The neutral member acknowledges the assistance of the Employee and Carrier Representatives at the hearings, but, consistent with the direction of the parties, the conclusions, findings and award below are those of the neutral member alone, speaking for the Board.

An initial hearing in this matter was held in the offices of the Carrier in Duluth, Minnesota, on December 17, 1976, at which time the IBEW, the Carrier, and BRAC were afforded the opportunity to present statements and oral comments on their position. It was agreed that rebuttal briefs would be prepared, and these were received by mail by the Board in timely fashion. A second hearing was held on January 14, 1977, at the Carrier's offices, at which time rebuttal evidence and argument were received. The parties having agreed that their presentations were complete, the Board thereupon declared the hearing closed.

The parties agreed that the issue to be resolved by the Board is as follows:

Do electricians represented by the International Brotherhood of Electrical Workers, and employed by the Duluth, Missabe and Iron Range Railway Company, have the exclusive right to the electric bridge crane operator assignments at Carrier's Steelton bulk materials handling facility?

The Carrier has in effect a collective bargaining agreement dated October 1, 1959, with System Federation No. 71, Railway Employees' Department, AFL-CIO, of which the International Brotherhood of Electrical Workers is a party. The Carrier also has in effect a collective bargaining agreement with the Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees "representing Ore Dock Employees", effective October 1, 1970.

The relevant portions of the Carrier-System Federation No. 71 Agreement are as follows:

Scope

It is understood that this agreement shall apply to those employees who perform the work specified in this agreement in the Maintenance of Equipment Department; Marine; Communications Department; Electrical and Signal Departments of the Carrier.

Rule 93

Classification of Work

Electricians' work shall consist of maintaining, repairing, rebuilding, inspecting and installing the electric wiring of all generators, switchboards, meters, motors, and controls, rheostats and controls, motor generators, electric headlights and headlight generator, electric welding machines, storage batteries, axle lighting equipment, and signal equipment, installing and repairing all inside and outside telegraph and telephone equipment except when done by linemen, electric clocks and electric lighting fixtures, winding armatures, fields, magnet coils, rotors, transformers and starting compensators; inside and outside wiring at shops, buildings, yards and on structures and all conduit work

in connection therewith, installing and repairing all telegraph, telephone and electric pole lines and service wires either overhead or underground and all work in connection therewith except when done by linemen; including steam and electric locomotives, passenger trains, motor cars, electric cable splicing; high tension power house and substation operators, high tension linemen, electric crane operators and all other work generally recognized as electricians' work.

Supplement Agreement No..10

Electric crane operators working as of July 1, 1939, will continue as operators and at their present rate of pay. When any of the present incumbents of these jobs are removed from this work, the positions will then be filled from the Electrical Workers' craft.

Among the facilities operated by the Carrier are those at Lakehead and Steelton, for the purpose of storing and reclaiming taconite pellets brought to and taken from these storage facilities. These are ore docks, where the work is performed predominantly but not exclusively by employees belonging to BRAC. The Steelton location is a new one for the Carrier, commencing operation in late 1976. It is the agreement between the Carrier and BRAC to assign 12 operators to three overhead electric cranes at this new facility which gives rise to the IBEW's claim which, put simply, is that its agreement with the Carrier gives IBEW employees the exclusive right to operate these cranes.

As will be shown in the conclusion and Award below, the Board does not find that employees represented by the IBEW have the exclusive right to the operation of these cranes at Steelton. Since this is also the position maintained by the Carrier and BRAC, it is not necessary to comment in detail on the position as set forth by either of these parties, but rather to deal with the various arguments set forth on its own behalf by the IBEW.

Violation of Railway Labor Act

The IBEW contends that the Carrier has violated certain provisions of the Railway Labor Act in its method of initial determination that the cranes should be operated by employees represented by BRAC. This Special Board of Adjustment is not designed or empowered to consider violations of the Act, if any, and no further reference to this point need be made.

Scope of IBEW Coverage

The Carrier points to the "Scope" of the Agreement covering System Federation No. 71, and notes that it is confined to the Electrical Department, as well as a number of other departments, but not the Transportation Department, charged with operation of the Steelton facility. The IBEW finds the scope of its representation broader, pointing specifically to the assignment of IBEW members to various facilities, including Steelton (see IBEW Exhibits K through Q in particular).

This dispute on this point does not get to the heart of the matter. It is clear to the Board that Electricians are indeed assigned to various facilities, including Steelton, in the performance of their principal duties as electricians (viz., "maintaining, repairing, rebuilding, inspecting and installing") It is equally clear, however, that, in such assignments they remain under the direction of the Electrical Department. Note, for example, that most of the notices of job openings in IBEW Exhibits K through Q are headed "Electrical Department," and all are signed by R. R. Borg, Electrical Foreman. The presence of employees represented by the IBEW at Steelton, working properly under the scope and classification of their agreement, does not by itself extend the jurisdiction of the IBEW to other positions at Steelton where the claim of another union may be stronger.

Electrical Apprenticeship Training Program

The IBEW points to the outline of its Electrical Apprenticeship Training Program, with particular reference to the following:

ORE DOCKS ELECTRICAL CREW

. . . .

4. Storage facility electrical equipment and control, repair, maintenance, knowledge of operation and blueprint reading.

The fact that electricians in training become familiar with all electrical equipment, wherever located -- and even if it involves its operation for training purposes -- is a thin straw to grasp for establishing jurisdiction to the routine operation of the equipment involved.

Operation of Lakehead Storage Facilities Stacker

The IBEW made the undisputed point that on occasion and on a repetitive basis, electricians are assigned to move and place equipment known as Stackers at the Lakehead storage facility. This is firm evidence of the IBEW's rightful place as employees for certain duties at the storage facilities but again it appears that these duties are closely related to the special skills required of a craft electrician for this purpose. From this it cannot be inferred that such assignment is any proof of exclusive jurisdiction over other ore storage facility equipment.

Supplement Agreement No. 10

The IBEW places strongest emphasis on the portion of its Agreement with the Carrier which reads:

Supplement Agreement No. 10

Electric crane operators working as of July 1, 1939 will continue as operators and at their present rate of pay. When any of the present incumbents of these jobs are removed from this work, the positions will then be filled from the Electrical Workers' Craft.

In the face of it, this clause would appear to grant exclusive jurisdiction to the Electricians of the operation of electric cranes. But both the context of the provision and the realities of the Carrier's widespread and diverse operations before and after the institution of the provision (originally in 1939) must be considered.

In the first place, the Agreement to which Supplemental Agreement No. 10 is attached covers six crafts (specifically not including BRAC), of which the IBEW is one. It is not unusual for such agreements to specify which of the affected crafts shall have exclusive rights to certain work. It cannot be found to be binding on other unions not parties to the agreement, unless of course such other agreements includes identical and complementary language (which the BRAC agreement with the Carrier emphatically does not). Supplemental Agreement No. 10 appears to provide exclusive IBEW jurisdiction within the six crafts under the applicable agreement, and not more.

Uncontested evidence was presented to the Board to show that openings in other electric crane operating jobs -- especially in ore storage facilities -- had been filled, without protest from the IBEW, in the past. In addition, cranes are operated, evidence shows, by other crafts for other purposes under agreement separate from System Federation No. 71.

The Board finds that Supplemental Agreement No. 10 continues to refer to specific electrical cranes in direct connection with the work classifications covered by the Agreement in which it is contained.

The Nature and Purpose of the Work

The Board comes now to a consideration of the central issue of the dispute: What is the nature and purpose of the work being performed? The Carrier has established a new ore storage and reclamation facility at Steelton. Storage and reclamation of ore, and in the past other bulk materials such as coal, has traditionally been the work of employees represented by BRAC in the employ of this Carrier. Indeed, no question was raised as to this by the IBEW at Steelton. Movement of such materials is by a variety of methods, but traditionally has included hoisting apparatus to raise and lower such material, the very function of the electric cranes here involved. To carve away such portion of the work, traditionally and historically performed by ore dock workers, would be to sever improperly an essential portion of the work covered by the BRAC agreement. The Steelton facility is new, and the cranes are new; the work involved is entirely unchanged.

The background facts in each case and under each collective bargaining agreement always differ in some respects. Nevertheless the words of Referee Carter in Award No. 1829, Second Division, are applicable to this case, in theory even if not in exact parallel as to all facts:

The operation of a crane is not the exclusive work of any craft on this carrier. It ordinarily belongs to the craft whose work it performs. It is the character of the work performed by the crane that ordinarily determines the craft from which its operator will be drawn. This is on the theory that as the work performed belongs to a certain craft, the methods employed to perform it, including the machinery used, does not have the effect of removing it from the agreement with the craft who hold rights to the work.

CONCLUSION

The International Brotherhood of Electrical Workers has taken on an awesome task to seek exclusive rights to operating electric cranes at Steelton, for it must not only establish its rights to have its members work at Steelton in certain capacities (which it has done) but must also show why it should do the work in question to the entire exclusion of others. As stated by Referee Twomey in Award No.6867, Second Division:

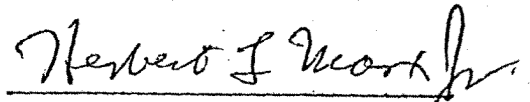
Since the petitioning Organization has not demonstrated to this Board that the work in question is reserved to the Organization exclusively by clear, definite and unambiguous language of a rule, unencumbered by other rules of the agreement, then in order for us to sustain the instant claim the Organization must demonstrate that /the work/ has historically and exclusively been performed by the . . . craft system-wide. By system-wide we mean that the burden of proof is on the Organization to show exclusivity of practice system-wide.

The IBEW has indeed shown that it has rights of the job of electric crane operator under certain circumstances, even extending to the "inside" crane at Steelton (which, however, is not used for the movement of bulk material.) No showing was made of exclusive right to all crane work. In assigning work at the new Steelton facility, no showing was made that the Carrier did so to the derogation of its existing and varying agreements with different unions. It proceeded in the natural order, and not, this Board finds, breaking any new ground by a change in work jurisdiction.

A W A R D

Electricians represented by the International Brotherhood of Electrical Workers, and employed by the Duluth, Missabe and Iron Range Railway Company, do not have the exclusive right to the electric bridge crane operator assignments at Carrier's Steelton bulk materials handling facility.

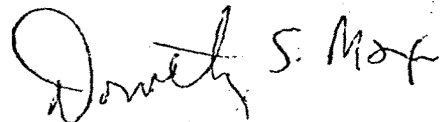
Claim denied.



Herbert L. Marx, Jr.
Chairman and Neutral Member
Public Law Board No. 1858

DATED: January 31, 1977

On this thirty-first day of January, 1977, before me personally came and appeared Herbert L. Marx, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



DOROTHY S. MARX
Notary Public, State of New York
No. 31-4311634
Qualified in New York County
Commission Expires March 30, 1977

NATIONAL MEDIATION BOARD

PUBLIC LAW BOARD NO. 1858

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INTERNATIONAL BROTHERHOOD OF :
ELECTRICAL WORKERS :

and :

DULUTH, MISSABE AND IRON RANGE :
RAILWAY COMPANY :

BROTHERHOOD OF RAILWAY, AIRLINE :
AND STEAMSHIP CLERKS, FREIGHT :
HANDLERS, EXPRESS AND STATION :
EMPLOYEES, Third Party at :
Interest :
----- x

Members of Board

E. J. McDermott, Employe Member

Carl L. Signorelli, Carrier Member

Herbert L. Marx, Jr., Neutral Member
and Chairman

Award Date: Janaary 31, 1977

Interpretation Date: February 16, 1977

RECEIVED

FEB 24 1977

J. C. FLETCHER

INTERPRETATION BY NEUTRAL MEMBER

By letter dated February 8, 1977, the Carrier has requested an interpretation of the Award made by the neutral member of Public Law Board No. 1858. The interpretation requested has to do with operation of the "inside" crane at the Carrier's Steelton facility. The letter requesting the interpretation is attached as Exhibit A, made a part of this supplementary interpretation, is self-explanatory, and requires no further elaboration herein.

Paragraph H of the agreement dated December 3, 1976, establishing the special board of adjustment in this matter reads as follows:

The Board shall make findings and render a decision in this dispute. Such findings and decision shall be in writing and a copy shall be furnished the respective parties to the dispute. The neutral member of the Board, consistent with Paragraph "F", shall render a decision or make such other rulings and decisions necessary to carry out the functions of the Board. In case a dispute arises involving an interpretation of a decision while the Board is in existence or upon recall within 30 days thereafter, the Board, upon the request of either party, shall interpret the decision in light of the dispute.

The Carrier is thus within its rights in unilaterally seeking an interpretation of the decision.

The portion at issue of the Findings and Award of the Neutral Member is on page 8 and reads as follows:

The IBEW has indeed shown that it has rights to the job of electric crane operator under certain circumstances, even extending to the "inside" crane at Steelton (which, however, is not used for the movement of bulk material). No showing was made of exclusive right to all crane work. In assigning work at the new Steelton facility, no showing was made that the Carrier did so to the derogation of its existing and varying agreements with different unions. It proceeded in the natural order, and not, this Board finds, breaking any new ground by a change in work jurisdiction..

The Carrier seeks an interpretation that the IBEW does not have exclusive rights to operation of the "inside" crane at Steelton. The Board infers from the Carrier's letter of February 8, 1977, that the IBEW interprets the Findings and Award as recognizing its exclusive rights to the operation of the "inside" crane.

Public Law Board No. 1858 dealt with the "electric bridge crane operator assignments at Carrier's Steelton bulk materials handling facilities", and the dispute among the parties had to do exclusively with the three "outside" electric cranes used in connection with pellet storage and reclamation. The Award dealt with no other Carrier or IBEW claims in reference to any other crane.

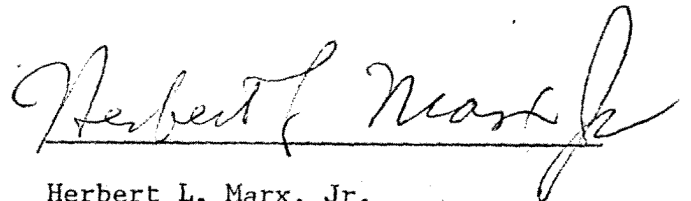
The discussion on page 8 of the Findings and Award was utilized by the Board solely to support the IBEW position that it had established to the Board's satisfaction that "under certain circumstances" it had rights to work assignments at Steelton. This had to do with the line of argument concerning the Electrical Department and the Transportation Department and the IBEW's status in these departments.

In reaching its conclusions concerning the "outside" cranes, the Board noted the parties had no disagreement that employees represented by the IBEW were operating the "inside" crane at Steelton (see IBEW Brief, p. 15; Carrier Rebuttal Brief, pp. 10-11; BRAC Rebuttal Brief, p. 19; and IBEW Rebuttal Brief to Carrier's Brief, p. 6).

Nothing in the Findings and Award sought to determine jurisdiction over other than the three "outside" cranes, nor would it have been within the scope of the Board's authority to do so. Reference to the "inside" crane was limited, as noted above, to whether or not the IBEW had any rights at Steelton.

Thus, in response to the Carrier's interpretation request, nothing in

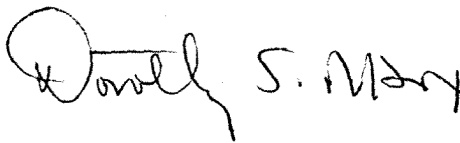
the Findings and Award is determinative of work assignment on the "inside" crane. Whether the IBEW has exclusive rights, certain rights along with other crafts, or no rights to the inside crane operation cannot be found in the Findings and Award of Public Law Board No. 1858. It is a separate question which must rely on other appropriate factors -- and not the Findings and Award in this dispute -- for resolution.



Herbert L. Marx, Jr.
Chairman and Neutral Member
Public Law Board No. 1858

Dated: February 16, 1977

On this sixteenth day of February, 1977, before me personally came and appeared Herbert L. Marx, Jr., to me known and known to me to be the individual described in and who executed the foregoing instrument, and he acknowledged to me that he executed the same.



DOROTHY S. MARX
Notary Public, State of New York
No. 3146911634
Qualified in New York County
Commission Expires March 30, 1977