

PUBLIC LAW BOARD NO.3430
(Procedural)

C&NWT File No. D-Misc.-139
Award No. 1

PARTIES TO DISPUTE: * BROTHERHOOD OF RAILWAY CARMEN
 *
 *
 * -and-
 *
 * CHICAGO AND NORTH WESTERN
 * TRANSPORTATION COMPANY
 *

STATEMENT OF CLAIM:

Should the claim involving Carman Denis R. Krogman,
et al. (C&NWT File No.D-Misc.-1391) be referred to a merits
Public Law Board ?

FINDINGS:

The Board, upon the whole record and all the evidence, finds
as follows:

That the parties were given due notice of the hearing;

That the Carrier and 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 Board has jurisdiction over the dispute involved
herein.

On August 10, 1981, a claim was filed on behalf of four (4) Carmen
who were employed at the Carrier's Clinton Car Shop located in Clinton,
Iowa. The claim alleged that the four Carmen were harassed and intimi-
dated by Special Agents employed by the Carrier. The Organization
alleged that the Carmen were subjected to an illegal strip search after
Carrier had received an anonymous unsubstantiated tip that they were in
possession of drugs.

The claim was denied by the Carrier at various levels of appeal.
By letter dated August 23, 1982 General Chairman Murphy served notice
on the Carrier, pursuant to Public Law 89-456, that the Organization
intended to submit the claim to a Special Board of Adjustment. The

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Carrier responded that it did not feel the issue was appropriate for presentation to a Public Law Board since it did not involve an interpretation of schedule rules and agreements; nor did it request relief within the jurisdiction of a Board. The Carrier, therefore, refused to docket the claim to a Public Law Board. Although the Organization disagreed with the Carrier's contention, it did agree to submit the claim to a procedural Public Law Board which would determine whether it should be referred to a merits Public Law Board for resolution.

The Organization contends that the dispute involves the interpretation and/or application of the agreement rules between the parties, and is, therefore, a dispute within the jurisdiction of a merits Board. Carrier's action at Clinton, according to the Organization, constituted a violation of Rule 35 of the controlling agreement and Rule 12 of the General Regulations and Safety Rules. Moreover, whether or not the relief requested by the Organization was within the jurisdiction of a merits Board to order should not be the determining factor before this Board, the Organization insists.

The Carrier retorts that although it complained that its Special Agents harassed and intimidated employees, the Organization has not asserted that it violated any schedule rule or agreement concerning rates of pay, rules or working conditions. Consequently, the claim does not constitute a dispute within the meaning of the Railway Labor Act, the Carrier submits. Further, since the only relief sought by the Organization is that the Carrier not engage in the conduct complained of in the future, it is obviously seeking injunctive relief which Public Law Boards have no authority to order. For these reasons, the Carrier insists that the claim submitted by the Organization is not referable to a merits Public Law Board.

It must be stressed that throughout the handling of this claim on the property the only remedy sought by the Organization was "for the Carrier

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to take action to correct the policy of harassment and intimidation so that employees at the Clinton Car Shop have their rights protected." This was the entire relief sought when the claim was initially submitted on August 10, 1981; when it was appealed on November 3, 1981; when the General Chairman appealed it on January 13, 1982; and when notice was served by the Organization that it intended to submit the dispute to a Special Board of Adjustment. Furthermore, the Organization reiterated this proposed remedy when it proffered a Memorandum of Agreement to establish a Public Law Board pursuant to Public Law 89-456, for Carrier's review and signature. At no time throughout the grievance procedure did the ^{Organization} ~~Carrier~~ request any remedy for the four Carman who were allegedly harassed and intimidated by the Carrier's Special Agents.

It is well established that Boards established under Section 3, First (i) of the Railway Labor Act, as amended, lack equity powers. Nowhere in the Railway Labor Act are such Boards empowered to grant injunctive relief. Since the only relief requested by the Organization is for the Carrier "to correct its policy of harassment and intimidation so that employees at the Clinton Car Shop have their rights protected," it is manifestly clear that a merits Board would lack authority to grant this relief. Consequently, even if the instant claim involved the interpretation and/or application of Rule 35 as claimed by the Organization, which itself is a questionable contention, absolutely no remedy could be ordered by a merits Board. Since this would obviously be the conclusion reached by a merits Board, we firmly believe that the claim should not be referred to a merits Board.

AWARD: The claim involving Carman Denis R. Krogman et al. (C&NWT

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File No. ~~D-25~~sc.-1391) should not be referred to a merits Public
Law Board.

Robert M. O'Brien
Robert M. O'Brien, Chairman and Neutral Member

William H. Fairchild *Dissenting*
W. G. Fairchild, Employee Member

J. M. Raaz
J. M. Raaz, Carrier Member

Dated: *Sept. 17, 1984*