

Referee Harold M. Weston

PARTIES Marine Engineers Beneficial Association
TO
DISPUTE: Mackinac Transportation Company

STATEMENT OF CLAIM: The Marine Engineers Beneficial Association, District 2, AFL-CIO claim that the Mackinac Transportation Company should pay Health and Welfare and Pensions Fund contributions as provided in the collective bargaining agreement to all employees covered by the agreement and not simply the Union members covered by the agreement. Specifically the Company has refused to pay such benefits on behalf of employees Douglas Bynorth and Richard Cage.

OPINION OF BOARD: The substance of the present claim is that Carrier is violating its Collective Bargaining Agreement with Petitioner by failing to make contributions to the Union Pension Plan and Welfare Plan for two non-members of the Organization.

Petitioner has been duly designated their exclusive bargaining agent by Carrier's engineers and in that capacity has negotiated the applicable Agreement, Rules 10 and 11 of which prescribe that Carrier pay over to the District No. 2 MEBA Welfare Plan and to the District No. 2 MEBA Pension Plan a stipulated sum "each day an employeereceives compensation on a position which is subject to the wages and working conditions agreed to by and between the Carrier and District No. 2, Marine Engineers Beneficial Association." These provisions are definite and unambiguous and may not be abrogated or modified by contracts between Carrier and individual employes. In view of their clarity, there is no occasion to consider past practice and whether or not Petitioner sought to amend Rules 10 and 11.

Carrier's assertions that the two men in question are not employes is not substantiated by the record. Both fill positions and perform work that are embraced by the Agreement and there is no question but that they are covered by its rules.

The Petitioner has the exclusive right to represent the engineers and must exercise that power fairly and on behalf of all employes in the bargaining unit. If, as Carrier suggests, some question exists as to whether engineers who are non-Union members are being deprived of contract benefits received by other engineers, that question may be explored in an appropriate proceeding. The instant case concerns only the issue as to whether or not Carrier is required to make welfare and pension payments for all employes within the bargaining unit, whether or not they are members of

the Organization; that issue must, without any question, be resolved in the affirmative.

FINDINGS:

The Fourth Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing, but were granted privilege of appearing before the Division with Referee sitting as a member thereof, to present oral argument.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST:

E. A. Killeen
E. A. Killeen
Secretary

Dated at Chicago, Illinois, this 5th day of October, 1971.