

Award No. 455

Docket No. 447

2-Va-EW-'40

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That furloughed Electrician E. W. Moses, formerly employed by the Virginian Railway Company at Roanoke, Va., be given an opportunity to qualify on electric locomotive work, and when his qualification is successfully demonstrated, he be restored to the service in keeping with his seniority rights of December 9, 1922, and paid for all time lost since his unjust furlough of January 20, 1927.

EMPLOYEES' STATEMENT OF FACTS: E. W. Moses was employed by the Virginian Railway Company as an electrician as of December 9, 1922, and remained in the service except when furloughed until January 20, 1927, at which time he was unjustly furloughed while two electricians junior to Moses in point of service, were retained in the service as electricians. The two men retained were W. M. Porterfield, seniority date September 19, 1926, and M. B. Parks, seniority date February 1, 1927.

POSITION OF EMPLOYEES: Paragraph (b) of Rule 16 of the then and now existing agreement, reads as follows:

"An employe exercising his seniority under this rule, if, after a fair trial fails to qualify, shall retain his seniority rights, but may not displace any regularly assigned employe." (Emphasis ours.)

The underlining in the quotation of above rule is ours and is intended to call attention to the intent of the rule to give an employe a fair trial on any job in his classification which he may feel competent to perform before he can be disqualified. Mr. Moses was never given such a trial although he repeatedly requested that he be allowed that right.

Paragraph (c) of Rule 16 of the previous mentioned agreement reads as follows:

"In case a new position or vacancy is not applied for, or is filled in accordance with this rule, and the applicant or applicants fail to qualify, the company may assign the junior qualified employe."

This item also clearly reveals that an opportunity to qualify will be given to applicant or applicants for all new jobs and vacancies, and also provides that only after a fair trial has been given those desiring the job and they have failed to qualify can a junior employe be assigned thereto.

Mr. Moses was never given an opportunity to thus demonstrate his ability to perform repair work upon electric locomotives, but was arbitrarily declared "not qualified" and refused a trial of any kind.

(b)—That, on the merits, the carrier has in all respects complied with the terms of its contract covering the employment and furlough of E. W. Moses.

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

The carrier or carriers and the employe or 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 were given due notice of hearing thereon.

Electrician E. W. Moses was laid off in reduction of force, account of being disqualified for a certain class of work, and an electrician his junior retained. The Division after giving due weight to all the facts of record is of the opinion that Moses should be given an opportunity to demonstrate his ability to perform the work in question.

AWARD

Claim sustained with seniority rights unimpaired and without payment for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of May, 1940.