

Award No. 1136
Docket No. 1050
2-W&LE-CM-'46

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 23, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE WHEELING AND LAKE ERIE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier be ordered to re-instate in the service Carman Joseph Bachmayer with his seniority rights unimpaired and with pay for all time lost since October 18, 1944.

EMPLOYEES' STATEMENT OF FACTS: The claimant, Joseph Bachmayer, established seniority as a carman as of November 4, 1930, on the carman's seniority roster at Ironville car shops, Toledo, Ohio, and he retained such good standing seniority dating until September 30, 1944.

This claimant sustained an injury to his left knee, which interfered with performing his assigned duties. He reported this on September 1 and 5, 1944, to General Foreman Hollerbach, and later on September 5, Mr. Hollerbach came to his home and presented to him a permit to consult the company doctor. This was done on September 6. On September 11 the company doctor taped this claimant's knee. On Friday, September 15, the nurse in the doctor's office told this claimant he could go back to work. On Monday, September 18, the claimant reported to General Foreman Hollerbach that he had been released for duty and that his knee was swollen and still hurt him badly. The general foreman instructed this claimant to lay floors in freight cars, and the claimant told him that he was not able to kneel and could not perform such work. The general foreman then replied to the claimant, you are unfit to work and left, and as the claimant was not able to lay flooring in freight cars he went back home.

Effective September 30, 1944, General Foreman Hollerbach notified this claimant that his name was removed from the seniority roster and his record of employment closed, copy of which is submitted and identified as Exhibit A.

The agreement controlling is dated effective March 1, 1943.

POSITION OF EMPLOYEES: It is the contention of the employes that the action taken against this claimant on September 30, 1944, was not warranted, and has not to date been justified. Both General Foreman Hollerbach and the local committee personally knew the condition of the claimant's left knee. This claimant was not able to do the work which General Foreman Hollerbach expected him to do when his name was removed from the seniority roster on September 30. This is substantiated by the following documents:

- (a) Statement of Doctor Kuebbeler dated October 4, 1944, copy submitted and identified as Exhibit B.

date of October 14, 1944, the general foreman stated that he would not change the decision made at the close of the investigation held on October 3, 1944.

On October 26, 1944, twenty-three days after the initial decision and twelve days after refusal to reconsider said decision, the case was appealed to the general foreman, car department, by the general chairman, Brotherhood Railway Carmen of America. The appeal was rejected because it was not handled within the ten-day period provided by Paragraph (A) of Rule 13.

In turn, the case was then appealed by the general chairman to the superintendent motive power and cars under date of November 14, 1944, (14 days after the next previous decision), and to the executive vice president and general manager under date of December 24, 1944, (33 days after the next previous decision). Both appeals were denied because they had not been handled in accordance with Paragraph (A) of Rule 13.

The carrier submits that the instant claim is barred by reason of non-compliance with Paragraph (A) of Rule 13 and should, therefore, be dismissed.

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.

This Board cannot consider the merits of this claim, for the employe in presenting and prosecuting it did not comply with the provisions of Rule 13. †

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 19th day of March, 1946.