

Award No. 3064
Docket No. 2670
2-GN-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Dudley E. Whiting when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carman)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1) That under the current agreement Carman Thomas P. Podgorek was improperly denied position as mill mechanic on May 7, 1956.

2) That accordingly the Carrier be ordered to assign Carman Podgorek to the position of mill mechanic and compensate him for difference in pay from May 7, 1956 until he is assigned to that position.

EMPLOYES' STATEMENT OF FACTS: On April 30, 1956 a position of woodmill machinist was bulletined at Superior Repair Track. On May 7, 1956 the position was awarded to Mr. Stanley Krynski who was junior to Mr. Thomas P. Podgorek in seniority. Mr. Podgorek has a seniority date on the Superior Shops roster as a carman of 8-24-22. Mr. Krynski has a seniority date of 9-1-22.

The dispute was handled with carrier officials designated to handle such affairs who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: On April 30, 1956 a position of woodmill machinist was bulletined and on which Mr. Thomas A. Podgorek hereinafter referred to as the claimant, bid. Although claimant had a seniority date of 8-24-22, the job was awarded to a carman junior to claimant, who held a seniority date of 9-1-22. Rule 4 (a) of the current agreement provides:

"New positions or vacancies of more than thirty (30) days' duration will be bulletined for a period of five (5) calendar days, and

vices, perform his work in a safe manner, etc.; carrier only exercised common sense and its safety-responsibility to claimant when this position as woodmill machinist was denied him.

For the reasons and facts as developed and substantiated throughout this submission, carrier is of the firm opinion that this claim of the employes is entirely lacking in merit and must be denied. For, if not denied, then the Board will be substituting its judgment, relative to safety practices, necessity of the observance of safety rules by employes, etc., in place of that of the carrier. And, we think that in light of all the evidence contained herein relative to claimant's unsafe work habits and his personal safety record, if a sustaining award is rendered a gross inequity and excess of jurisdiction will exist, which could result in very serious personal injury to claimant, Mr. Podgorak, as well as the possibility of causing injury to his fellow employes due to this claimant's proven disregard for sound safety practices and instructions.

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.

Parties to said dispute were given due notice of hearing thereon.

After investigation held June 3, 1955 the claimant was disqualified as a Wood Mill Machinist for unsafe operation of wood mill machinery. No protest was filed nor appeal taken thereon.

On April 30, 1956 a position of Wood Mill Machinist was bulletined. Claimant bid for it but the award was to a junior bidder. Rule 4(a) provides for assignment of the "senior qualified applicant". Since claimant was disqualified without protest a short time previously and since no change of circumstances appears, claimant cannot be considered a qualified applicant for the position from which disqualified.

A disqualification for unsafe practices persisted in despite many years of experience on the job is much different than a disqualification during a trial period for inability to perform the work. Hence, our finding in Award No. 1084, that the claimant there should be given another chance to qualify after more than a year of additional experience, is not applicable here.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of December, 1958.