

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

The Second Division consisted of the regular members and in addition Referee John P. Devaney when Award was rendered

PARTIES TO DISPUTE:

RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.
(BOILERMAKERS)
ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—

Question No. 1.—Should Steve Bonswick be removed from the boilermakers' roster and be placed on the sheet metal worker helpers' roster?

Question No. 2.—Is Loui DePiero, boilermaker displaced by Steve Bonswick when the management restored Bonswick's seniority rights, entitled to his position as boilermaker at Brier Hill roundhouse, and compensation for time lost during this period of displacement?

FACTS.—Steve Bonswick, boilermaker, while in the service of the Erie Railroad Company, was injured on July 9, 1927. The injury was so serious as to prevent his continuing his duties as boilermaker. On December 10, 1927, the company claim agent authorized Bonswick's return to duty, with the proviso "that light work be furnished." None was furnished. In February, 1930, Bonswick worked as boilermaker for three days, in place of a regular boilermaker who was ill. During the elapsed time to approximately May, 1929, Bonswick continued at intervals to call at the shop, in an effort to obtain light work. There are no written reports to substantiate the facts of these calls.

In the late summer of 1929, Bonswick reported to General Foreman T. E. Cullen, Brier Hill, Ohio, that he was ready to return to his regular duty as a boilermaker. No action was taken by Cullen. Bonswick then appealed in person to the district master mechanic, and shortly thereafter, on February 15, 1930, was recalled to service as a boilermaker, for a period of three days.

There is evidence in the record that Bonswick continued to communicate with those in authority in an effort to secure his seniority rights as a boilermaker. He did not meet with success. On April 1, 1930, Bonswick accepted work as a sheet metal worker helper and continued until June 1, 1931, when the position was abolished.

On or about July 23, 1931, Bonswick was restored to his regular position as boilermaker, and one Loui DePiero, who had replaced Bonswick at the time of his injury, was laid off as the youngest in line of seniority, and Bonswick restored to his full seniority rights since the date of his injury.

POSITION OF EMPLOYEES.—It is the claim of employees that Bonswick, during October, 1928, operated an oil and gasoline station; and during October, 1930, he was engaged in business of selling or delivering coal; and that by reason of these activities he lost his seniority rights through violation of Rule 24 of the shop crafts' agreement, which reads as follows:

"(a) When the requirements of the service will permit, employees, upon request, will be granted leave of absence for a limited time, with the privilege of renewal. An employee, absent on leave, who engages in outside employment will lose his seniority.

(b) An employee unavoidably kept from work will not be discriminated against.

An employee absent from work on account of sickness or other good cause shall notify his foreman as early as possible.

When able to return to work he shall notify his foreman in sufficient time to enable him to make proper arrangements."

That Bonswick abandoned his seniority rights by accepting a position as a sheet metal worker.

POSITION OF CARRIER.—That Bonswick has not lost his seniority rights, as the record is not clear as to the extent to which he engaged in outside employment, and it is nowhere shown that he was capable of resuming his duties of boilermaker at the time of engaging in such employment.

That it was not only his right, but his duty, to do what he could to make a living during that period of time when his injuries incapacitated him from engaging in the arduous work required of a boilermaker.

That Bonswick was at all time anxious to be employed at light work, but unable to carry on regular duties as boilermaker, and continuously and repeatedly attempted to be replaced as boilermaker and to resume his seniority rights and his duties as such.

That Bonswick assumed the position of sheet metal worker under protest, and by so doing did not abandon his seniority rights as boilermaker.

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.

FURTHER FINDINGS.—That the case is pending and unadjusted within the meaning of the language of paragraph (i) of Section Three of the Railway Labor Act as amended June 21, 1934.

The record and the evidence as a whole does not satisfactorily establish the fact that Bonswick engaged in outside employment, or that at the time of so engaging, the outside employment was of that character which indicated that he was in such physical condition as to permit him to return to the work of a boilermaker.

That an employe's seniority rights are valuable, substantial, and important, and that he should be deprived of these rights only on the clearest sort of a showing that he acted in violation of Rule 24.

The burden is upon those who assert a violation of the rules, to prove the same by credible and satisfactory evidence. There is no credible or competent evidence in this record to substantiate the claim that Bonswick violated Rule 24, and that he ever intended to abandon his seniority rights.

There is no credible evidence in the record to sustain the claim that the work in which Bonswick engaged was of a type that capacity to perform it would indicate capacity to return to the duty of boilermaker.

In the absence of credible, competent, and satisfactory evidence, and in view of the failure of the petitioner to sustain the burden of proof, and for the further reason that every reasonable presumption is in favor of the retention by an employe of the valuable and important rights of seniority, it is found that Bonswick never intended to abandon his rights as a boilermaker, and that by accepting the temporary position of sheet metal worker he did not seek to establish seniority rights in another division, but accepted this employment until such time as his case might be disposed of in regular order.

That Bonswick after being physically able to return to work was at all times willing and ready to so return.

That he did not violate Rule 24 of the shop crafts' agreement.

AWARD

That the claim of Boilermaker Loui DePiero is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING

Secretary

Dated at Chicago, Illinois, this 13th day of February, 1936.