

Award No. 166

Docket No. 178

2-TC-BK-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.
(BLACKSMITHS)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That J. B. Coleman, blacksmith helper, should be returned to work at the Nashville shops, Tennessee Central Railroad, in accordance with his seniority in preference to junior helper, D. F. Brown, as provided for in Rule 21, and that Coleman be compensated for all time D. F. Brown has worked and Coleman has remained on furlough.

EMPLOYES' STATEMENT OF FACTS: J. B. Coleman, blacksmith helper, was cut off through a reduction in force, December 11, 1931, in accordance with provisions of Rule 21. Since that time D. F. Brown, a junior employe, has been called back to work on several occasions and Coleman has been required to remain on furlough. Rule 21 reads:

"When it becomes necessary to reduce expenses, the hours may be reduced to forty per week before reducing the force. When the force is reduced, seniority as per rule 25 will govern, the men affected to take the rate of the job to which they are assigned. Forty-eight hours' notice will be given before hours are reduced. If the force is to be reduced, four days' notice will be given to the men affected before reduction is made, and lists will be furnished local representatives.

In the restoration of forces, senior laid-off men will be given preference in returning to service if available within a reasonable length of time and shall be returned to their former positions, if possible, regular hours to be re-established prior to any additional increase in force.

The local representative will be furnished a list of men to be restored to service.

In the reduction of forces the ratio of apprentices will be maintained.

Men laid off will furnish their full addresses to official in charge and local representative, and shall renew their addresses each sixty (60) days. Failure to return to service within a reasonable length of time after being notified will forfeit their seniority rights without reasonable excuse acceptable to the management is given."

POSITION OF EMPLOYEES: J. B. Coleman has handled his case in accordance with the rules and practices on the railroad but was unsuccessful in being restored to service. Coleman was laid off in a regular reduction of

force. He has not been subjected to discipline of any kind. He has been to the shop and conferred with the officers and made every effort to be restored to service before making any claim to the higher officials.

It is the contention of the employees that there is no good reason why Coleman should not be accorded the right to work in line with his seniority.

It will be noted from the attached correspondence that on the seniority list dated December 10, 1930, Coleman is senior to Brown, also on the seniority list dated December 6, 1933. On the seniority list of June 1, 1935, Coleman's name was removed from seniority roster. This list has not been accepted by the representatives of the employees. It will be noted that the two previous seniority rosters were signed and accepted.

CARRIER'S STATEMENT OF FACTS: 1. J. B. Coleman last performed service for the carrier on December 11, 1931.

2. J. B. Coleman was incompetent to perform the work required of an additional helper used during short periods of time in 1932.

3. During the hearing given J. B. Coleman by the master mechanic of the railway company on November 3, 1932, on his complaint for not being used, he was dismissed from the service for insubordination and incompetency.

4. The claim of J. B. Coleman for reinstatement in the service was settled by agreement between the committee of the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, the duly authorized representative of the employe, and the master mechanic of the railway company, representing the carrier.

POSITION OF CARRIER: On account of dull business the blacksmith shop was closed down to a running repair basis in December, 1931, and the operation of this shop has since been maintained in this status. When necessary to occasionally use an extra helper in 1932 on account of absence of assigned helpers or on account of additional emergency work, a man younger in point of service than Coleman was called, Coleman not being qualified to do the work required, as he had not learned to properly handle a sledge hammer. Also it was necessary to call a man on short notice in these instances, and even if he could have properly performed the work required, he was not available in such instances due to the fact that he lived 12 or 14 miles out in the country.

No complaint was made by Coleman until October 22, 1932. In the investigation of the complaint by the master mechanic of the railway company on November 3, 1932, with Coleman present, along with W. G. Park, blacksmith, representing Coleman, on informing Coleman that he had not been called for extra work on account of his being incompetent to do the work required, he assumed a very threatening attitude, and was thereupon dismissed from the service by the master mechanic of the railway company. W. G. Park, committeeman, certified to the correctness of the report of the master mechanic in this connection.

Subsequently, in the handling of the claim of Coleman for reinstatement, the committee of the International Brotherhood of Blacksmiths, Drop Forgers and Helpers, the duly authorized representative of the employe, agreed with the master mechanic of the railway company that Coleman's dismissal was justified, the committee stating they would give the case no further handling, and that the matter was closed so far as they were concerned.

This case having been disposed of by agreement between the duly authorized committee representing the employe, and the master mechanic of the railway company, representing the carrier, the management has consistently refused to reopen or review the case on the grounds that it had been settled.

SUMMARY: 1. The failure to use J. B. Coleman in the emergency work required in 1932 and his subsequent dismissal from the service were justified.

2. The claim of the employe for reinstatement in the service was disposed of by agreement between the duly authorized representatives of the employe and the duly authorized representative of the carrier.

3. Paragraph (i) of Section 3 of the Railway Labor Act as amended June 21, 1934, reads as follows:

"The disputes between an employe or group of employes and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

4. Agreement having been reached in this case, the carrier takes the position that your honorable board is without jurisdiction and should dismiss the case.

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.

J. B. Coleman, blacksmith helper, was furloughed in a reduction of force, December 11, 1931.

Junior employes were returned to service while Coleman was required to remain on furlough in violation of Rule 21. No justification was presented for questioning the competency of J. B. Coleman after seven years' service.

AWARD

J. B. Coleman, blacksmith helper, shall be returned to service in accordance with his seniority rights and compensated for time lost from October 22, 1932.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of July, 1937.