

Award No. 259
Docket No. 289
2-CMS^tP&P-CM-'38

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

**CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: Request that Louis H. Harris be reinstated with his proper seniority and compensation for back wages.

EMPLOYEES' STATEMENT OF FACTS: Louis H. Harris, also known as L. H. Harris, of McGregor, Clayton County, Iowa, now fifty-two years of age, was employed by said railroad company on or about June, 1911, and continued in such employment until he was laid off on or about May 1, 1931.

The reason for petitioner being then laid off was a reduction of the force of the railroad company. The petitioner, since said lay-off, has never been reinstated. During the first seven or eight years of petitioner's said employment, he served in the capacity of general car repairer, and for the balance of said employment as car inspector, including both freight and passenger cars, with a few exceptions of general repair work. Said services were performed by the petitioner at Marquette, Clayton County, Iowa. The general duties of the general car repairer is to do the general repair work on cars in the shops, while the duties of car inspector are to look over the cars, locate defects, report the same, and send the cars to repair shops, except that light repairs are made on the spot. The petitioner, since he was laid off, has always been ready, able, willing and available to resume his employment and job with the said railroad company. The petitioner has made every possible effort from the time he was laid off to get his job back and to be reinstated with the railroad company, but has been unable to do so. The said railroad company has violated the seniority rule, refused to employ or reinstate the petitioner, and has reinstated and employed men junior in rank to the petitioner, all in violation of the contract, rules and agreement existing between the petitioner and the railroad company.

The petitioner has duly presented the said grievances, and the failure of the said railroad company to reinstate him according to the seniority rule, successively in the following order, to-wit: The grievances were first presented, commencing about two months after the lay-off, to J. H. Fisher, foreman of the said railroad company at Marquette, Iowa; securing no employment, the matter was then duly presented to J. M. Linehan, district general car foreman, of Savannah, Illinois; again securing no employment, the matter was duly presented to W. Snell, master mechanic, of Chicago, Illinois; again, securing no employment, the matter was duly presented to K. M. Nystrum, shop superintendent and also general superintendent of motive power, of Milwaukee, Wisconsin; still securing no employment, the matter

was accepted on the part of the carrier and became effective by reason of L. H. Harris having been offered employment which he declined.

POSITION OF CARRIER: Subsequent to May, 1931, L. H. Harris' ability was not sufficient to obtain employment as car inspector and air brakeman, although Car Foreman J. H. Fisher at Marquette endeavored to provide Harris with employment which he declined to accept and thereby the action taken by the Federated Shop Crafts Committee being favorably considered by the carrier was justified.

The carrier contends that the claim of Louis H. Harris for reinstatement in the service of the carrier as car repairer at Marquette, Iowa, cannot be favorably considered in view of the evidence of facts which establishes his responsibility for declining to accept the consideration shown him, which would have provided employment.

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 waived right of appearance at hearing thereon.

It is the opinion of this Division that the facts of record do not sustain the claim of the employes.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of September, 1938.