

Award No. 276

Docket No. 302

2-DL&W-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Joseph Feeney, machinist, be restored to service and reimbursed for wage loss sustained account having been placed on furlough in disregard of his seniority rights over Joseph Dempski, machinist, September 4, 1937.

EMPLOYEES' STATEMENT OF FACTS: The service records of claimant and Mr. Dempski, as issued by the office of Master Mechanic Quinn, in charge of the division territory within which the dispute arises, is as follows:

Joseph Dempski—machinist
Utica enginehouse.

- 4- 1-1919—Entered service as machinist
- 7- 1-1922—Out on strike
- 10-25-1922—Reemployed
- 7-18-1929—Laid off
- 8- 1-1929—Reemployed as machinist helper
- 1-12-1930—Promoted to machinist
- 10- 4-1934—Laid off
- 6- -1935—Returned to work second half of June, 1935,
worked a few days and was off sick
- 7-15-1937—Returned to work

Joseph Feeney—machinist
Utica enginehouse.

- 12-12-1924—Entered service as machinist at Syracuse
enginehouse
- 1- 8-1927—Promoted to leader
- 1-10-1934—Electrician
- 6-23-1934—Machinist
- 2-21-1936—Entered service as machinist at Utica
enginehouse

System Federation No. 78, Railway Employees' Department, American Federation of Labor, was certified by the National Mediation Board as the duly authorized representative of the shop crafts on the carrier September 14, 1934, and the current agreement, which supersedes all other agreements and practices within its scope thereon, became effective November 1, 1935.

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 boiler-maker.

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 helper 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."

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.

The record in this case does not establish the fact that Machinist Dempksi was on leave of absence. The record does show that he was a furloughed employe with rights to return to service under the provisions of the agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1938.