

Award No. 280

Docket No. 291

2-L&A-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 59, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

LOUISIANA AND ARKANSAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist J. J. Kelly be reinstated with seniority unimpaired and paid for all time lost as a result of his unjust discharge in violation of the agreement dated August 1, 1929.

EMPLOYEES' STATEMENT OF FACTS: On March 13, 1932, at about 8:00 A. M., Mr. E. M. Smith, mechanical superintendent of the Louisiana and Arkansas Railway Company, together with Master Mechanic Roberts, approached J. J. Kelly concerning the distribution of some ballots, charging Machinist Kelly with disloyalty to the company and the distribution of these strike ballots, and notifying him that he was permanently discharged, giving no other reasons.

POSITION OF EMPLOYEES: We contend that Machinist Kelly was discharged unjustly for the following reasons: That he refused to sign a petition accepting a reduction in wages at that time proposed by management, and for allegedly distributing strike ballots. Carman Holliday approached Machinist Kelly telling him if he would agree to this proposed reduction in pay it would assist in re-opening the shop which was then closed down; this Kelly refused to do. Machinist Kelly was not given an investigation or an opportunity to defend himself or receive written notice of his discharge.

We request your Honorable Board to reinstate Machinist Kelly and order him paid for all time lost by reason of his unjust discharge.

CARRIER'S STATEMENT OF FACTS: J. J. Kelly, a machinist, employed by carrier at Minden, Louisiana, was dismissed from service on March 13, 1932, for violation of carrier's rules, distributing strike ballots on company property while under pay, which Kelly readily admitted to carrier's officers. This action was three days after appointment of an Emergency Fact Finding Board by the President of the United States and only two days before such Board started its hearings. No request was ever made for investigation or hearing.

POSITION OF CARRIER: Carrier takes exception to complainant's demand now and hereafter in all cases where reference is made to agreement dated August 1, 1929, as set forth in the caption of this claim, as there was no such agreement in effect at the time this man was dismissed from the service.

Carrier admits that on August 1, 1929, an agreement was entered into between the Louisiana and Arkansas Railway Company and its shop craft

thereafter requested by Kelly in connection with such dismissal. On the contrary, he accepted his time and was apparently satisfied with the action taken.

While carrier always granted full and complete hearings and investigation during the period said 1931 rules were in effect, as above stated, Kelly made no request for such hearings or investigation; in fact, the first notice of any kind carrier had that Machinist Kelly was dissatisfied with dismissal was in connection with the negotiations of the present agreement, effective October 20, 1937, when the shop craft committee in negotiations about the middle of 1937, more than five years after Kelly had been dismissed, stated that they wanted all men reinstated who were dismissed from the service during the period the 1931 rules were in force. Carrier, however, declined to consider such request and advised the committee that the two matters were entirely separate. Carrier further alleges that it understood that the signing of the new agreement of October 20, 1937, fully settled and concluded all matters prior thereto, including the dismissal of Machinist Kelly.

Carrier further alleges that when Machinist Kelly was confronted and accused with distributing strike ballots while on duty and under pay, he readily admitted the charge and by his actions also admitted that he was properly and justly disciplined. That while no investigation or other hearings were held, none were requested by Kelly or any one for him. That there is nothing in any statement made by him to justify his violation of the rules or to justify or require carrier to rescind its action or return him to its service. Carrier further says that said discharge has long since been settled and concluded by Kelly's said actions.

Carrier reserves unto itself any and all rights it might have, with respect to jurisdiction or on the merits, both before this Board and in the Courts, and requests that if this Board assumes jurisdiction hereof, that it be heard orally and on brief.

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.

The carrier challenges the jurisdiction of this Division for the reasons:

(a). "That this claim was not pending and unadjusted on June 21, 1934, when this Board was created by amendment to the Railway Labor Act, and, therefore, this Board has no jurisdiction to hear and decide this controversy."

There is evidence that a dispute existed on this railway to the extent that the President appointed a Fact Finding Commission to report on the same, and while the case in question is not one which the Fact Finding Commission investigated, it is one of the instances growing out of this dispute. Therefore, the claim was pending and unadjusted June 21, 1934.

(b). "That petitioner's claim has not been handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes."

There is ample evidence that the employes did endeavor, without avail, to secure conferences with the management for the decision of this case. Therefore, contention that this "claim had not been handled in the usual manner" is not valid.

The employes' claim is predicated on the violation of an agreement effective August 1, 1929, while the carrier contends that this agreement of the shop crafts was cancelled by proper notice February 9, 1931, and was, therefore, not in effect, but the posted rules, issued by the carrier, effective February 9, 1931, were in effect.

Rule 15, Section A, of the Agreement of August 1, 1929, reads:

"No employe will be dismissed or suspended without just and sufficient cause. If after proper investigation it is found that a man has been unjustly discharged or suspended he will be reinstated and paid for all time lost."

Rule 15 of the posted rules, which carrier states was in effect at the time, is identical with Rule 15, Section A, of the Agreement effective August 1, 1929.

Without passing as to the legality of the cancellation of the agreement of August 1, 1929, it is to be noted that both the rule under the agreement and the rule in the posted rules relied upon by the carrier are identical, and, after reviewing all evidence therein submitted, it is found that Kelly was dismissed without just and sufficient cause.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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