

Award No. 281

Docket No. 292

2-L&A-FT-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

LOUISIANA AND ARKANSAS RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That men laid off without regard to seniority, the company failing to call such men back in service, while other junior employees or new employees were called in to fill their places, be restored to service with seniority unimpaired and paid for all time lost.

These claims are the result of violation of agreement dated August 1, 1929, and involve the men as listed on the following page, under "Position of Employees."

EMPLOYEES' STATEMENT OF FACTS: In 1930, the company arbitrarily cut wages of employees, also abrogated its agreement with System Federation No. 59, and later followed this by discriminating, discharging, coercing, intimidating, and in every possible manner mistreating any and all employees who attempted to have the agreement and the law complied with by the company.

POSITION OF EMPLOYEES: That the railway company wilfully violated the agreement of August 1, 1929, by arbitrarily replacing it with a proposed set of rules, also reducing wages of employees without complying with the requirements of the agreement, or the Railway Labor Act, and has, since 1930, continued to ignore this agreement, as well as the representatives of the employees, who, at various times during this period, attempted to confer with the officials of the company. This condition continued up to October 8, 1937, when the company finally agreed to meet the duly authorized committee, resulting in re-establishing an agreement with System Federation No. 59.

The history of the efforts of these employees to secure justice is a matter of public record and conclusively proves that no stone was left unturned by these employees in their efforts to have the matter adjusted. Numerous attempts were made by the National Mediation Board to settle this case; two emergency boards were appointed by the President and both of these investigations condemned the railroad for their arbitrary methods.

The following men are involved in this claim:

handled through the regular channels up to carrier's highest official designated for the purpose, as provided in the Railway Labor Act, as amended; (d) that in the event the claims of petitioner are based on the rules of February 9, 1931, as amended, that carrier has complied with and carried out the terms and provisions of said rules; (e) that if it should be held that rules of February 9, 1931, as amended, were invalid for any reason, such invalidity did not and cannot restore the rules of August 1, 1929, so that during the period when said listed men lost their alleged seniority no agreement existed between carrier and petitioner, or said men; that this Board, in the absence of any agreement, is without jurisdiction to hear and determine any of said claims; and (f) that the effect of the agreement of October 20, 1937, between carrier and petitioner was not only to recognize the effect and validity of the 1931 rules as amended, but also to settle and foreclose any and all claims arising prior to the effective date of said agreement of October 20, 1937.

Without waiving any of its rights, either with respect to the validity of the procedure of this Board, or its jurisdiction to pass upon and determine the merits of said claim, carrier submits fifteen (15) copies of this, its statement, in which it has attempted with the information now at hand, to set out its position in respect to said claim. Carrier reserves the right to answer said claim in detail after it has been advised of the true nature and basis thereof, and to support such answer with evidence, documentary or otherwise.

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 issue raised on the following grounds:

"1. Whether or not the contract of August 1, 1929, was legally cancelled, or, as contended by petitioners, arbitrarily replaced with a set of proposed rules.

2. Whether or not this claim was 'pending and unadjusted' on June 21, 1934, when the amended Railway Labor Act was adopted and this Board created.

3. And finally, if it be decided that said contract of 1929 was in effect and that these cases were 'pending and unadjusted' on June 21, 1934.

(a) Whether the cases of all or only a part of the employes now listed in this proceeding have been handled as provided by the amended Railway Labor Act; and

(b) whether the facts justify the relief demanded by all employes properly before this Board."

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

Rule 9 of the agreement effective August 1, 1929, reads:

"When forces are reduced seniority is to govern when force is increased, men laid off will be given preference in re-employment, in the order of their seniority, if available within ten (10) days."

Rule 9 of the posted rules of February 9, 1931, relied upon by the carrier, is identical with Rule 9 of the agreement effective August 1, 1929.

Without passing as to the legality of the agreement of August 1, 1929, it is evident that this rule was in effect either by agreement or by the posted set of rules relied upon by the carrier.

Carrier relies also on an alleged amendment to these rules dated September 1, 1931, reading as follows:

"This seniority list will be held open for adjustment for a period of 30 days, or until September 30th, 1931, after which time no adjustment will be made. Request for adjustment of seniority must be made in writing to the undersigned. Seniority of former employes who have not worked under the classification which they held as seniority during any twelve months period will be dropped from the seniority list."

The circumstances and surroundings concerning the posting of this bulletin are sharply in dispute.

It does not appear in the rules submitted by the carrier, under which they state their employes were working from February 9, 1931, to October 8, 1937, and cannot be considered as a part and parcel of these rules.

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 the dispute. Therefore, the claim was pending and unadjusted June 21, 1934.

The list of men affected, as submitted by the employes, was not complete, and this Division is unable to determine thereby those who are entitled to relief under the contention made by the employes. This, therefore, is a matter for both parties to the dispute to check and determine those who are entitled to such relief.

Facts are that many employes were furloughed and not re-employed under the rule:

"When forces are reduced seniority is to govern when force is increased, men laid off will be given preference in re-employment, in the order of their seniority, if available within ten (10) days."

and, therefore, are entitled to relief.

AWARD

Claim of employes sustained to the effect that such men who were laid off or who were not called back in order of their seniority will be reinstated with seniority unimpaired and paid for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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