

Award No. 594

Docket No. 624

2-C&S-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Thomas S. Walsh, machinist, formerly employed at Denver, Colorado, for the Colorado and Southern Railway, be restored to service as of seniority date of February 8, 1926.

EMPLOYES' STATEMENT OF FACTS: Mr. Walsh was laid off August 31, 1927, the company union held the agreement on the road, and because he was a member of the International Association of Machinists he could not get his case properly handled under the existing organization at that time. There were three machinists junior to Walsh retained in service at the time force reduction was made. The junior machinists are still in service of the company, they are: Machinists Kidneigh, White, and Hunt.

POSITION OF EMPLOYES: Since so much time has elapsed in the handling of this case, our position has necessarily changed to what it would have been handled at the time he was furloughed, in that no pay is claimed and that reinstatement is requested.

To offset management's position wherein they claim that Mr. Walsh was not laid off unjustly and in violation of Rule 23, we offer in evidence Exhibit A, B, C and the affidavit of Machinist W. R. Duke as Exhibit D.

All correspondence between management and our organization is submitted.

POSITION OF CARRIER: The claim, as presented in Mr. Jewell's letter January 7, copy of which we received, reads as follows:

"Claim that Thomas S. Walsh, machinist, formerly employed at Denver, Colorado, for the Colorado & Southern Railway be restored to service as of seniority date, February 8, 1926."

Mr. Thomas S. Walsh was laid off in force reduction August 31, 1927, and has not been reemployed since that time. At the time he was laid off, he did not file a claim in connection with any alleged violation of the schedule, nor did he file any claim or protest subsequent to that date until June 16, 1937, or ten years after he was laid off. Therefore, your Board has no jurisdiction of this case as there was no protest or dispute pending at the time of the enactment of the amended Railway Labor Act, June 21, 1934.

The agreement between The Colorado and Southern Railway Company and the Association of Mechanical Department Employees of The Colorado

or those who have retired and whom we were able to contact and discuss the matter. Mr. Walsh's name, however, has not appeared on any of the seniority rosters in the late years, especially rosters that have been in effect since the first agreement with the Federated Shop Crafts beginning with January 1, 1935.

The foregoing indicates that Mr. Walsh, if he had any grievance, failed to comply with the provisions of the agreement then in effect, and if he still was of the opinion that he had seniority status, continued to fail to comply with the provisions of subsequent agreements. It is our opinion from our discussion of this case with the general chairman that Mr. Walsh is only attempting to be reinstated so as to establish a seniority date subsequent to the enactment of the Railroad Retirement Act, for the sole purpose of making application to retire under that Act and secure the benefits of a Federal annuity. We cannot believe that he is sincere in his belief that he has been unjustly treated by this company and that the company or the organization that represented the employees at the time of his lay-off violated any provisions of the agreement.

As Mr. Walsh did not comply with the provisions of the agreement, as previously shown, his claim, if your Board decides to take jurisdiction, should be declined.

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.

This case was not "pending and unadjusted on the date of approval of this Act," as defined in Section 3, First (i) of the amended Railway Labor Act, approved June 21, 1934.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of March, 1941.