

Award No. 1073

Docket No. 992

2-NYC-CM-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That on September 18, 1942, at South Bend, Indiana, the carrier violated the controlling agreement and Rule 27 thereof by refusing to allow Carman E. O. Mattox to go to work as a carman after he was called to return to work.

2—That the carrier be ordered to allow E. O. Mattox to return to work as a carman and pay him for all time lost since September 18, 1942.

JOINT STATEMENT OF FACTS: June 24, 1929, E. O. Mattox was employed as a carman at South Bend, Indiana, and he carried that date on the seniority roster since that time. On December 30, 1930, while inspecting cars and coupling air hose, his left arm was crushed, resulting in its being necessary to amputate his left arm four inches below the elbow. Later on he was provided with an artificial arm.

June 1, 1931 he returned to work as a laborer and continued in that capacity until August 16, 1931, at which time he returned to his own position as a car inspector. On August 20, 1932 he went to work on the repair track, repairing cars, working piece work. He continued on that position until February 27, 1933 when he was laid off on account of reduction in force.

On September 18, 1942 the force was to be increased and he was notified to return to work. He responded to the call and advised the foreman that he would return to work and take the carman's position which he was called for. The foreman then informed Mr. Mattox that he would not allow him to return to work as a carman in any position.

POSITION OF EMPLOYEES: We contend that the carrier violated the controlling agreement and Rule 27 thereof when they refused to allow Mr. Mattox to return to work in accordance with his seniority. Rule 27, third paragraph, reads as follows:

"In the restoration of forces, senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former positions if possible, regular hours to be reestablished prior to any additional increase in force."

his ability to successfully perform the duties of a carman during the period from August 16, 1931 to February 27, 1933, there was no obligation under Rule 27, as contended by the employees, to give him a further trial in 1942, and that officials in charge were justified in disqualifying him at that time.

On the evidence of record the Board should deny the request of the employees.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 submitted on a joint statement of facts. Claimant was employed as a carman, on December 30, 1930, while inspecting cars his left arm was crushed and it became necessary to amputate his left arm four inches below the elbow. He was provided with an artificial arm. He was employed as a carman during the period of August 16, 1931 to February 27, 1933, when he was laid off. He was given a position under Rule 23 as a crossing watchman, being paid \$173.38 per month, which position he now holds.

It is the contention of the employees that the carrier's refusal to restore Mr. Mattox, senior laid off man, to a position as carman was violation of general Rule 27 of the current agreement. This record shows beyond any question, by affidavits of the men who worked with Mattox, that he was not capable, due to the unfortunate injury that he suffered, to fill the position he sought. Clearly, there was no duty on the part of the railroad company to fill the position with one unable to perform the duties of said position. There was no violation of rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 15th day of May, 1945.