

Award No. 1084

Docket No. 1000

2-LV-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. 96, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LEHIGH VALLEY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier violated the controlling agreement and particularly Rule 18, when senior applicant Carman Frank P. Kennedy was not assigned as a car inspector on the regular track from 7:00 A. M. to 3:30 P. M., seven days per week, on or since April 15, 1944.

2. That the carrier be ordered to—

(a) Assign Carman Frank P. Kennedy to the aforesaid position,
and

(b) Additionally compensate him at 5 cents per hour for each hour worked on said position by the employe improperly assigned thereto.

EMPLOYEES STATEMENT OF FACTS: The carrier maintains in the seniority territory of Sayre, Pennsylvania, approximately 400 carmen, helpers and coach cleaners, and Carman Kennedy has been regularly employed in the service there as a carman since November 16, 1939.

On July 9, 1943, the claimant, Carman Kennedy submitted to an inspector's examination. He was qualified as a car inspector and was assigned by bulletin from 11:00 P. M. to 7:00 A. M., seven days per week in the east bound yard as a car inspector.

The carrier advertised on bulletin boards April 8, 1944, a car inspector's position on the repair track from 7:00 A. M. to 3:30 P. M., seven days a week (See Exhibit A) and on April 10, Carman Frank P. Kennedy made application therefor (See Exhibit B).

It developed that Carman Kennedy was either the senior or the only applicant for this position, and it was so awarded to him on Saturday, April 15. On Monday, April 17, however, the awarding of this position was changed and Carman Helper Mike Finn, promoted to a carman on May 24, 1941, was assigned to the position.

The controlling agreement is dated effective November 1, 1942.

based entirely on his inability to fill the position, he was disqualified. Rule 18 was complied with when Mr. Kennedy was given the position in June 1943, and in view of the fact that he did not show sufficient ability by trial in the position at that time, we took the position that he was not entitled to another trial at the lapse of a few months.

We believe, therefore, that there was no violation of the agreement in declining to give Mr. Kennedy another trial on the position, and we ask that our position be sustained.

The facts presented in this submission were made a matter of discussion with the Committee in conference on the property.

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 employes contend that the carrier violated Rule 18 when senior applicant Carman F. P. Kennedy was not assigned as a car inspector on the repair track. Kennedy had been given a trial on a similar job, and on June 26, 1943, he was removed from that position on account of inability to perform the duties. Rule 18 provides that the oldest employe in point of service who "if sufficient ability is shown by trial be given preference." Kennedy had been given a trial and the claim for compensation cannot be allowed.

This referee is of the opinion that better than a year having transpired the carrier should now give Kennedy a chance to qualify.

AWARD

Claim for compensation denied.

Kennedy to be given a trial to qualify for the position.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Fourth Division

ATTEST: J. L. Mindling,
Secretary

Dated at Chicago, Illinois, this 21st day of June 1945.