

Award No. 1484

Docket No. 1400

2-StLSF-CM-'51

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Carmen)**

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (1) That under the controlling agreement, furloughed Coach Cleaner Oscar Lauck should have been recalled to service May 28, 1950.

(2) That accordingly, the carrier be ordered to compensate him for all time lost between May 27, 1950 and July 10, 1950.

EMPLOYES' STATEMENT OF FACTS: Oscar Lauck, hereinafter referred to as the claimant, was employed by the carrier at Chaffee, Missouri as a coach cleaner with a seniority date as of December 8, 1940 and this is affirmed by the seniority roster of January 1, 1949, a copy of which is submitted and identified as Exhibit A.

Claimant was furloughed in a force reduction effective June 1, 1949.

Effective May 28, 1950, the coach cleaner forces at Chaffee, Missouri, were increased and coach cleaner Ralph D. Kinder whose seniority date was September 1, 1945 (See Exhibit A) and who was furloughed, was recalled to service and worked as such until July 10, 1950, on which date claimant was recalled and reported for duty.

This dispute has been handled in accordance with the agreement effective January 1, 1945, and subsequently amended, up to and including the highest carrier officer to whom such matters are subject to be appealed with the result that this officer has declined to make any satisfactory adjustment.

POSITION OF EMPLOYES: It is submitted that within the meaning of Rule 34 (a) reading in pertinent part,

"Should any employe subject to this agreement believe he has been unjustly dealt with or any of the provisions of this agreement have been violated, the case—shall be taken—"

that this claimant was an employe subject to the controlling agreement and that he not only believed he had been unjustly dealt with but that the provisions of this agreement, particularly Rule 27 (d) reading,

This letter was referred to the carrier's master mechanic. The carrier's master mechanic and car foreman, in conference with the employes' local chairman at Chaffee on July 6, 1950, agreed to reinstate Mr. Lauck as a coach cleaner, at which time it was also agreed that Mr. Lauck would be permitted to displace the junior employe on the coach cleaner's position. The master mechanic declined to compensate Mr. Lauck for time lost.

Mr. Lauck's claim for time lost was appealed in succession up to and including the carrier's director of personnel, who is the highest officer on this property designated to handle such matters. The handling between the carrier's general chairman and the carrier's director of personnel consisted of a single exchange of letters. The general chairman's letter of appeal was dated September 11, 1950. The carrier's director of personnel made reply on October 4, 1950, declining the time claim. There was no further handling of this claim on the property. The general chairman did not notify the carrier's director of personnel that his decision was unacceptable. No conference concerning the matter was held between the general chairman and the director of personnel, nor was conference requested by the general chairman.

The first information the carrier had of the organization's intention to submit this dispute to the Second Division, National Railroad Adjustment Board, was copy of letter dated March 29, 1951 from Acting President Michael Fox notifying the Executive Secretary of your division that the organization would make an ex parte submission of this dispute to your Board.

It is the carrier's position that such perfunctory handling of a claim or grievance by a general chairman with the highest official designated by the carrier to handle such matters is not in harmony with the intent and meaning of the Railway Labor Act and it is the carrier's further position that this case is not properly before the Board for the reason that the employes did not exert every reasonable effort to dispose of this dispute on the property before submitting it to your division of the National Railroad Adjustment Board. The fact of the matter is, this dispute was not considered in conference between the general chairman and the carrier's superintendent of motive power before it was appealed to the highest officer designated by the carrier to handle such cases. The only conference held in connection with this dispute was between the carrier's division officers and employes' local chairman before it was progressed to higher officials by the employes' general chairman.

It was stated in the findings of Award No. 12787 of the First Division, National Railroad Adjustment Board, that:

"The Railway Labor Act, Section 1, Second, provides, 'All disputes * * * shall be considered * * * in conference.' Section 3 (i) sets up the procedure to be followed before disputes or grievances are referred to this Board."

The case covered by Award No. 12787 of the First Division, National Railroad Adjustment Board, was remanded for proper conference on the property in conformance with the intent of the Railway Labor Act.

The carrier asserts that this claim should be denied or remanded by your Board for the following reasons:

1. When claimant conceded he was properly discharged for cause, his employment relationship with the carrier was entirely terminated and the claimant's right to exercise seniority as a coach cleaner vanished at that moment.
2. The employes failed to exert every reasonable effort to dispose of the dispute on the property before progressing it to the Adjustment Board.

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 had jurisdiction over the dispute involved herein.

The parties to said dispute waived right of appearance at hearing thereon.

Claimant Oscar S. Lauck, Coach Cleaner, Chaffee, Missouri, was furloughed on May 31, 1949 in a reduction of force. On May 28, 1950, coach cleaner forces at this point were increased and carrier called Ralph D. Kinder, an employe junior to claimant. Claimant was restored to service on July 10, 1950. The claim is for time lost from May 27, 1950 to July 10, 1950.

It appears that claimant on October 3, 1949, accepted employment as an engine watchman at Wittenberg, Missouri, a position under the Maintenance of Way Agreement. As a result of an investigation while employed under the latter agreement, claimant was dismissed from the service of the carrier on November 9, 1949. When the coach cleaner position was filled on May 28, 1950, claimant was out of the service by virtue of his dismissal. On July 10, 1950, he was restored to service as coach cleaner with his seniority rights unimpaired.

The dismissal of claimant from the service on November 9, 1949, had the effect of completely severing his employment relationship with the carrier. Claimant had no rights with the carrier on May 28, 1950, as engine watchman, coach cleaner, or otherwise, and therefore suffered no loss when Kinder was called for the coach cleaning position. Claimant had no rights under any agreement with this carrier until he was restored to service on July 10, 1950. His seniority rights as a coach cleaner accrued on July 10, 1950 because of his restoration to service on that date with seniority rights unimpaired. He has no rights as an employe from the date of his dismissal from service to the date his service rights were restored. No basis for claim exists.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of August, 1951.

DISSENT OF THE LABOR MEMBERS TO AWARD NO. 1484, DOCKET NO. 1400

We dissent from the findings and award in this case for the reason that the majority's findings that "The dismissal of claimant from the service on November 9, 1949, had the effect of completely severing his employment relationship with the carrier" ignores the agreement governing the employment of coach cleaners and erroneously sustains the carrier's violation of the controlling agreement.

R. W. Blake
A. C. Bowen
T. E. Losey
Edward W. Wiesner
George Wright