

Award No. 1568
Docket No. 1526
2-PRR-URRWA-CIO-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

UNITED RAILROAD WORKERS OF AMERICA, C. I. O.
PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That the carrier is without authority to ex parte force employes holding regular assignments as laborers, first shift, Altoona Car Shop, Altoona, Pennsylvania, to arbitrarily accept a position as carmen helpers on second shift, at the Twelfth Street Car Shop.

2. That the carrier accordingly be ordered to compensate R. K. Winslow, G. D. Conley, V. A. Germanaro, P. Lombardo, J. B. Bearer and B. J. Ender for all time lost at the rate of pay of Laborer, further, that P. Lombardo and G. D. Conley be reinstated with full seniority rights.

EMPLOYEES' STATEMENT OF FACTS: There is an agreement between the parties dated July 1, 1949, copy of which is on file with the Board, and is by reference hereby made a part of this statement of facts.

Employee R. K. Winslow, V. A. Germanaro, J. B. Bearer, B. J. Ender, G. D. Conley and P. Lombardo, hereinafter referred to as the claimants, all of whom were hired by the carrier during February, 1951, as laborers and acquired seniority as laborers as provided for in Regulation 3-A-1 (d) which reads as follows:

"Seniority of Common Laborers begins at the time their pay starts in the class."

On March 16, 17 and 18, 1951, claimants who were working as laborers at the Altoona car shop were instructed by their foreman that they should, effective March 19, 1951, report to the Twelfth Street car shop to work on second shift as carmen helpers. Claimants held no seniority rights as helpers, nor did they make any application for promotion as helpers.

None of the claimants accepted the position of carmen helpers, all stating that they were satisfied to work on the positions of laborers on first shift. All protested orally to their foreman of the arbitrary action of the carrier in attempting to remove them from their regular assignments without due process of the agreement.

Claimants were on March 23, 1951, given notice to appear for trial on March 28, 1951, in connection with allegedly refusing to do work assigned on March 19, 1951. This trial was held whereupon claimants P. Lombardo and G. D. Conley were dismissed from service effective May 1, 1951.

or if the Foreman does not reply within fifteen (15) calendar days from the date the case was presented, the case may then be appealed by the employe affected, or by the said representative in his behalf, to the Master Mechanic or corresponding officer. Unless decision is received from the Master Mechanic within thirty (30) calendar days from the date discussed, it will be considered his decision is denial. If the case is not satisfactorily adjusted, it may then be handled by the said representative with the Superintendent.

In the case of claims for compensation alleged to be due, the ten (10) calendar day provision in the preceding paragraph does not apply. In the case of these claims, the thirty (30) calendar day period involved in Regulation 4-P-1 is applicable.

NOTE: At Altoona Works 'Superintendent' means Superintendent Locomotive Shop, Superintendent Car Shop, or General Foreman in the Unit of Altoona Works where the question arose."

The carrier submits that there is ample evidence of record to support the charge against Claimants Conley and Lombardo, and that the action in dismissing these two claimants was not in any way arbitrary, malicious or in bad faith; and contends that, on the other hand, discipline was imposed upon these two claimants only after they had been afforded a fair and impartial trial, and on the basis of substantial evidence of the claimants' guilt as charged.

The carrier submits that the understanding had on April 2, 1951, with the Claimants Winslow, Germanaro, Bearer and Endler, that the claim which had been presented on their behalf was cancelled when their request that they be assigned to the car repairman helper vacancies was granted, was made in good faith. Therefore, your Honorable Board is respectfully requested to deny the claim in this matter.

The carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a proper record of all of the same.

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 plan that was used to fill the vacancies involved in this dispute was agreed to after conference between the local representatives of the carrier and employes and expresses their interpretation of the rules of the controlling agreement. It is clear under the terms of the agreement the carrier has the right to require its employes to accept temporary assignments necessary in the course of its operations. The controlling agreement sets up a procedure for relief of employes in the event they feel they have been unjustly treated, but rather than follow this procedure the claimants refused to accept the assignments thereby subjected themselves to disciplinary action.

Considering all of the facts in evidence claimants G. D. Conley and P. Lombardo should be restored to service with laborers seniority unimpaired, but claim for compensation for all time lost is denied.

AWARD

Claim sustained to the extent indicated.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 17th day of September, 1952.