

Award No. 1725
Docket No. MC-1459-82
2-SAL-I-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

ERNEST L. DILLON (INDIVIDUAL) (BOILERMAKER)

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: That the seniority date now shown by the carrier for Ernest L. Dillon, boilermaker, the petitioning employe, at Atlanta, Georgia, is subject to correction because of having been illegally established.

That the carrier be ordered to restore to the petitioner his former seniority date of April 3, 1936, at Atlanta, Georgia, together with such financial restitution as will reimburse him for loss of wages due to unemployment since being deprived of said seniority date.

EMPLOYEE'S STATEMENT OF FACTS: The employe was employed as boilermaker apprentice at Portsmouth, Virginia, in March of the year 1913. He was later employed at that point as journeyman boilermaker in the year 1919.

Such abandonment of shops as the carrier engaged in at Portsmouth, Virginia, in the year 1936, resulted in the employe taking employment as boilermaker in Atlanta, Georgia, beginning April 3, 1936.

The employe continuously held and exercised his seniority date of April 3, 1936, until the time he accepted a supervisory position of boiler foreman at Jacksonville, Florida, in the year 1941. His seniority date was deleted from roster after he accepted supervisory position at Jacksonville, Florida.

The employe returned to Atlanta in October, 1949, account of the afore-said supervisory position having then been abolished. He has since worked more or less on intermittent basis account of having been deprived of his seniority date of April 3, 1936.

The employe is fifty-six years of age and has been physically able to perform the work of boilermaker ever since returning to Atlanta, Georgia, October 10, 1949.

POSITION OF EMPLOYEE: It is presumed by the employe that this DIVISION of the BOARD has in its possession copies of agreement in effect between the Seaboard Air Line Railway Company and its employes repre-

"RULE 27. Seniority—

Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of Way

Maintenance of Equipment

Maintenance of Telegraph-Telephone Maintainers

Four sub-divisions of the carmen, as follows:

Pattern makers

Upholsterers

Painters

Other carmen

The seniority lists will be open to inspection and copy furnished the committee."

The duly authorized representative of the boilermakers on this property has been contacted and he is in agreement with the carrier that the seniority dates shown above are the correct dates of the petitioner. Further, it is the carrier's understanding the petitioner has been so advised by such representative.

POSITION OF THE CARRIER: This Board cannot assume jurisdiction of this alleged dispute because:

- (1) The dispute has not been handled in the usual manner on the property as required by the Railway Labor Act and the controlling working agreement Rules 31, 32 and 33.
- (2) No unadjusted dispute exists as the parties signatory to the controlling agreement in this case are in accord regarding this alleged dispute.

The carrier has shown in its Statement of Facts sufficient information and facts in support of the two above contentions and feels it is unnecessary to waste its time and to burden your Board with extensive arguments supporting its position in view of the many awards made by the Second Division in support thereof. A few such awards are:

514, 515, 643, 745, 746, 748, 749, 750, 777, 778, 779, 780, 781, 782, 801 and 802.

The carrier believes these awards are controlling in this case and will rely on the findings contained therein in support of its position as to jurisdiction.

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.

The parties to said dispute were given due notice of hearing thereon.

A hearing was afforded the parties on November 17, 1953. The claimant presented his alleged grievance to this Division without handling it in accordance with Rules 31, 32 and the agreed to "Note" under Rule 33 of the governing agreement.

Rule 31 reads as follows:

"Should any employee 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 to the foreman, general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representative, within ten (10) days. If stenographic report of investigation is taken, the committee shall be furnished a copy. If the result still be unsatisfactory, the duly authorized general committee, or their representative, shall have the right of appeal, preferably in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within ten (10) days of application.

All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen."

Rule 32 reads in part as follows:

"Should the highest designated railroad official, or his duly authorized representative, and the duly authorized representative of the employees, as provided in Rule 31, fail to agree, the case shall then be handled in accordance with the Railway Labor Act. * * *"

The "Note" under Rule 33 reads as follows:

"Neither Rule 31, 32, nor 33, attempts to obligate the carrier to refuse permission to an individual employee to present his own grievance or, in hearing involving charges against him, to present his own cases personally. The effect of these rules, when an individual employee presents his own grievance or case personally, is to require that the duly authorized committee, or its accredited representative, be permitted to be a party to all conferences, hearings or negotiations between the aggrieved or accused employee and the representatives of the carrier."

Section 3 (i) of the Railway Labor Act was not complied with.

The rules of procedure of the National Railroad Adjustment Board require that "No petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

This Division has previously held in Awards Nos. 514, 1275, 1680, 1718, 1720 and 1721:

"In order that this Board might assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner."

Due to the claimant's failure to pursue the required method of presenting his grievance, this Division of the National Railroad Adjustment Board is without power to pass upon his claim.

AWARD

The Second Division of the National Railroad Adjustment Board having no jurisdiction over the petition in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1953.