

Award No. 1748
Docket No. MC-1452-79
2-SOU-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

JIM THOMAS, KING TART, WILL DOSS, WILL CRAIG, JAMES H. CADE, DAN SMITH, SHADE STUCKEY, PEARLE G. CANNON, JOHN H. SIMMONS, RICHARD PEOPLE, LEE SHEALEY, FRANK GARRETT, AARON HUNTER AND JESSE JONES
(Individuals)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Claim of petitioners for reinstatement with seniority rights unimpaired and pay for all time lost from date of dismissal, for the alleged reason of reduction in forces and abolition of petitioners' jobs, until they are returned to service.

EMPLOYEES' STATEMENT OF FACTS: Since November 8, 1951, to February 9, 1953, employees, who were employed by the Southern Railway Company as boiler maker helpers have had their services terminated, and their places substituted by boiler makers. Employees claim that the carrier's action is in violation of the agreement which governs the working conditions, rates of pay, etc., namely, agreement between Southern Railway Company, et al, and the international Brotherhood of Boilermaker, Iron Ship Builders and Helpers of America, effective March 1, 1926, and amendments.

That there is a violation of Rule 78 **Boiler Maker Helpers:**

"Employees assigned to help boiler makers and their apprentices, operators of drill presses and bolt cutters in the boiler shop, boiler washers, punch and shear operators (cutting only bar stock and scrap)."

Rule 101. "Helpers will do all work generally recognized as boiler maker helpers work."

The employees further claim that there is available the same type of work, which they have always performed and which by agreement and tradition been designated as boilermaker helpers' work, now being performed by boilermakers, many with less seniority than boilermaker helpers.

Employees further allege that their complaint and grievances have been placed before the officials of the carrier for adjustment, as shown by

The effective shop crafts' agreement contains the following rule:

"26. Reduction of Expenses:

When it becomes necessary to reduce expenses, the force shall be reduced.

Five days' notice will be given men affected before reduction is made and list furnished representatives of the men.

The last man employed shall be the first man laid off.

In the restoration of forces, senior laid off men will be given preference and reemployment, if available within a reasonable time, and shall be returned to their former positions.

In reducing forces the ratio of apprentices will be maintained."

It became necessary at Birmingham to reduce expenses. Accordingly, expenses were reduced by laying off the men in the reverse order of seniority, i.e., the last man employed was the first laid off. This resulted in the claimants here involved being **laid off**. They have **not** been discharged.

Throughout the entire period that the program of conversion from steam to diesel-electric power has been in effect, the work of boilermakers and boiler-maker helpers has continually decreased. In fact, it has decreased to such an extent that there is no longer any need for employing boilermakers and boiler-maker helpers to the extent once employed. Work of the character previously assigned to and performed by them has disappeared with the result there are simply no jobs for them.

Under the Transportation Act, railroads are admonished by law with operating in an efficient and economical manner. They cannot so operate if required to employ forces not needed. Claim here before the Board is nothing more than an effort to force the carrier to employ unnecessary personnel. In these circumstances, a denial award is clearly in order if the Board should take jurisdiction and attempt to pass upon the merits of the dispute.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all 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.

The evidence of record shows that this case has not been handled in accordance with Section 3, First (i), of the Railway Labor Act and the terms of the current agreement.

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, 1721, 1725, and 1746:

"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 claimants' failure to pursue the required method of presenting their grievance, this Division of the National Railroad Adjustment Board is without power to pass upon their 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 12th day of March, 1954.