

Award No. 1852
Docket No. MC-1506-96
2-SOU-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

JOHN SANDERS MORGAN, et al.,—INDIVIDUALS
(Machinist Helpers)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. The Southern Railroad Company at its Knoxville shops have laid off the above captioned five individuals who are Machinist's Helpers and have laid off numerous other Machinist's Helpers in the past annual period under the pretext that there is insufficient work as defined by the Machinist's Helper Classification, notwithstanding the fact there is sufficient work as defined by the contract to provide regular employment for these employees.

2. The Southern Railroad Company is intentionally creating a shortage of Machinist's Helpers by laying them off from work so that the company can justify assigning their work to other employees with a different job classification.

3. The Southern Railroad Company has laid these Machinist's Helpers off and have assigned their work to employees of a different job classification who are Junior in Seniority.

4. The Southern Railroad Company has unjustly laid off the individual machinist's helpers without giving them proper Notice as defined by the Railroad Labor Act.

5. The Southern Railroad Company refuses to schedule a conference and discuss these charges with the employees mentioned hereinbefore and with the Committeemen of Local 871 of the International Association of Machinists. The claimants charge that all of the above allegations are in gross and flagrant violation of the working agreement between the employees and the company.

EMPLOYEES' STATEMENT OF FACTS: The claimants aver that the Southern Railroad Company has laid them off individually and collectively and has intentionally created a shortage of machinist's helpers and have so created this shortage to attempt to justify the assignment of the machinist helper's work to employees of a different job classification and to employees who are juniors in seniority to the laid off machinist helpers. This practice of the company has been continuous and progressive for the past two years.

Unless employee returns to service, gives the notice herein required or arranges proper leave of absence, he shall, except in cases of bona fide sickness, be stricken from the seniority list.

It is understood that employees must report as near the date called for as circumstances and conditions will permit."

The claimants were employed by carrier and hold seniority rights under the shop crafts' agreement. It became necessary to reduce expenses and the force was reduced by giving the required notice. Claimants, not having sufficient seniority to displace junior employes, were therefore furloughed in accordance with the rules. They stand to be recalled in accordance with their seniority if the force is increased.

Before the force reduction was made the operations were studied carefully and a sufficient number of men were retained to effect compliance with Rule 53 of the effective agreement, which provides that:

"Furnishing Help to Craftsmen and Apprentices:

Craftsmen and apprentices will be furnished sufficient competent help when needed to handle the work, if available. When experienced helpers are available, they will be employed in preference to inexperienced men.

Mechanics and apprentices to whom helpers are assigned shall be responsible for full employment of helpers in work they can properly do.

Mechanics and apprentices allowing helpers to do their work will be subject to dismissal."

There is no basis for the allegation that machinist helpers were laid off in violation of the agreement, nor is there any basis for the contention that the carrier intentionally created a shortage of machinist helpers, or that they were unjustly laid off.

Nor is there any basis for the contention that machinist helpers were laid off and their work assigned employes of a different job classification junior in the service, or that the men were laid off contrary to the Railway Labor Act.

The claimants allege that the complaint was made for the purpose of obtaining a conference under Rule 34 of the shop crafts' agreement. No such conference has been requested.

The complaint being without any merit whatsoever, the Board, not having jurisdiction to pass upon it, should dismiss it for want of jurisdiction. Carrier respectfully requests the Board to so hold.

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.

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, 1746 and 1748:

"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 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 8th day of December, 1954.