

Award No. 2588

Docket No. 2357

2-L&N-CM-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee D. Emmett Ferguson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the termination of the service rights of Carman (Coach Carpenter) Helper, Silas Roberts, at the beginning of his shift on May 31, 1955 was not authorized by the terms of the current agreement.

2. That accordingly the Carrier be ordered to restore this employe to service with pay for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Carman (Coach Carpenter) Helper Silas Roberts, hereinafter referred to as the claimant, with a seniority dating in the passenger car shop No. 9, South Louisville Shops, of June 20, 1947, notified the carrier on the morning of May 11 that he would be unable to return to work immediately under the agreement of May 9, 1955. This is substantiated by the documents submitted herewith and identified as employes' Exhibit A, A-1, and A-2.

On May 31, the claimant, after having fully recovered, reported for service on his 7 A.M. to 3:40 P.M. Monday through Friday assignment and was informed by the carrier's assistant superintendent that he had forfeited his seniority rights and was removed from the helpers' seniority roster of Shop No. 9.

This dispute was handled in the manner prescribed by the agreement up to and including the carrier's director of personnel and under date of October 13, 1955 the carrier proposed disposition of the dispute by restoring the claimant's name to the seniority roster and compensating him the difference between what he earned at outside employment and what he would have earned until September 15, 1955, alleging he was furloughed at that time (See employes' Exhibit B).

would have been occupied by Mr. Roberts, inasmuch as Mr. Harry A. Thomas was the last helper retained in service. Therefore, Mr. Roberts is due no additional compensation subsequent to September 15, 1955.

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 the dispute were given due notice of hearing thereon.

The claim for pay for time lost based on an erroneous termination of the claimant's service rights is one wherein there is general agreement on the facts.

Claimant Roberts was off during the strike and when he was supposed to return to work was disabled because of an injury. Notice of this fact was given to the employer but was overlooked and Roberts was cut off. He reported for work May 31, 1955 but at that time was not accepted. This situation continued until September 12, 1955, at which time the carrier bulletined a reduction of forces listing all the coach carpenter helpers who were younger than Roberts. His name was not listed as being one of those cut off.

On October 13 the carrier offered to pay Roberts up to September 15, "the time he would have been cut off in force reduction." The organization did not accept this offer although since October 13 Roberts has been carried on the roster.

If the cut in forces on September 12 had been made one deeper or one less than was made, there would be no dispute now. The difficulty arises from the fact that Roberts was neither on, nor properly off the roster, and the cut occurred right at his place in the line between the last man working and the first man cut off. To resolve the dilemma, this Board finds that Roberts not having been listed by name as one cut off, he was actually not cut off. It follows that his rightful restoration to the roster, which is now conceded, would have entitled him to be at work on September 12 and thereafter, if he had been restored as the organization requested.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 1st day of August, 1957.