

Award No. 3323

Docket No. 3271

2-MP-I-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**CURLEY McCrARY; THOMAS PAGE; MOSE McDOUGLE;
SAMUAL TYLER; BEN T. THURMAN; STERLING LOVE;
and ERNEST HOLMAN, Machinists' Helpers as represented by
Wilson Gray, Attorney at Law**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

These petitioners are furloughed Machinists Helpers under the jurisdiction of the Master Mechanic at St. Louis, Missouri, who claim that they were furloughed from their job in the latter part of May, 1957, in violation of their seniority rights as prescribed by Rules No. 15; Seniority Transfers; 25(e); Seniority Date; 21(a) Reduction of Forces: of the Agreement dated September 1, 1949, between the Missouri Pacific Railroad Company and System Federation No. 2 Railway Employees' Department and the Agreement dated November 1, 1934, between the Missouri Pacific Railway Company and Employees in The Maintenance of Equipment Department represented by the International Brotherhood of Fireman and Oilers, Roundhouse and Railway Shop Laborers, Rule 10(a), (b), and (c) and Rule 13(a) and (b).

These petitioners are seeking damages for failure to respect their seniority in that younger men were working and are yet working while they are not, and they are asking that their jobs be restored to them.

EMPLOYEES' STATEMENT OF FACTS: 1. The petitioners claim that the carrier furloughed each of them in violation of their seniority rights from their jobs as machinists helpers. They are asking to be restored to their jobs based on their seniority and for damages for failure to respect their seniority rights.

2. The petitioners state that they were employed by the carrier in its Maintenance of Equipment Depart. at its shops located at 3001 Chouteau Avenue, St. Louis, Missouri, as laborers on the following dates Mose McDougle, December 24, 1941; Curley McCrary, April 2, 1942; Thomas Page, March 2,

No protest has ever been received from any of the petitioners concerning their seniority unless the letter of intent filed with this Board may be considered such a protest. In any case, no protest has been received prior to the time petitioners were laid off within the time specified by the agreement and, therefore, their seniority dates were permanently fixed for the purpose of determining their rights as of the time petitioners were laid off. Petitioners were accorded all of the seniority rights to which they were entitled based on their seniority dates as they appear on the seniority roster for machinist helpers.

4.

Rule 21.

Rule 21(a) of the basic agreement which rule is entitled "Reduction of Forces" governs the order in which employes subject to that agreement will be laid off. Rule 21(a) reads as follows:

"(a) When the force is reduced seniority as per Rule 25 will govern; the men affected to take the rate of the job to which they are assigned. Employes displaced through the abolition of jobs or force reductions and other employes so affected thereby will be allowed to place themselves on such jobs as their seniority entitles them to, but only such employes who are actually disturbed by rearrangement of jobs or abolition of jobs will be permitted to exercise their seniority in this manner. Positions that have been abolished (not as the result of force reductions) and re-established within six months, the employe regularly assigned to the position at the time of its abolishment will be reassigned to the position regardless of seniority provided he applies therefor when the position is bulletined."

Note the first sentence states that "When the force is reduced seniority as per Rule 25 will govern;". The rule means that the junior man as shown on the seniority roster who is working must be laid off first and that process continued in the inverse order as their seniority is shown on the roster. The force reduction which caused petitioners to be laid off was made strictly in accordance with that rule based on the seniority dates as shown on the seniority roster for machinist helpers. The carrier fully complied with the requirements of Rule 21.

To summarize, it is the carrier's position that the claim must be dismissed because not properly presented in accordance with Rule 31 of the basic agreement and Article V of the agreement of August 21, 1954. Without waiving the foregoing defense, the carrier has explained the background of the dispute for the purpose of aiding the Board in understanding the claim and, in that connection, has shown that petitioners were given their correct seniority dates as machinist helpers in accordance with Memorandum Agreement SC-91-2 and that the carrier fully complied with Rule 21 of the basic agreement when petitioners were laid off. The carrier repeats the claim must be dismissed.

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.

Parties to said dispute were given due notice of hearing thereon.

The Railway Labor Act contemplates that before a grievance can be brought to this Board it "shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." This was not done with respect to the claim that is pending before this Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1959.