

Award No. 3569
Docket No. 3738-I
2-MKT-I-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

MILFORD M. LAHERTY

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY

DISPUTE: CLAIM OF PETITIONER:

Mr. Milford M. Laherty, complaint of carrier removing his name from Seniority Roster, as of November 16, 1958 M. K. T. shops, Parsons, Kansas, firemen and oiler craft.

EMPLOYEE'S STATEMENT OF FACTS: I was laid off because of force reduction, March 8, 1957. I registered for unemployment benefits with Mr. H. J. Blum Jr. the shop clerk and who was also the officer who notified me of the layoff. On September 2, 1957, I went to Norfolk, Virginia, but before I left to go there I gave my name and address by personal delivery to the officer mentioned above, as Route 2, Box 179F Princess Anne, Virginia. Please note that Princess Anne, Virginia, is a suburb of Norfolk, Virginia. I registered for unemployment benefits in Norfolk, Virginia, until I found other employment. During this time I had and still have my name and address on file in his office thus, complying with Rule 32 of our agreement and section 9 of the union shop agreement.

In January of 1958, I received my 1957, vacation check at the address I had given the officer notifying me of the lay off. The check came from the payroll department of the railroad in Denison, Texas. On April 17, 1959, I returned to Parsons, Kansas and gave my name and address to the officer notifying me of the force reduction, as 1814½ Crawford Avenue, Parsons, Kansas, the same and only home that I have had since I've been employed by the railroad. I was told at that time by the officer notifying me of the layoff that my name had been removed from Parsons railroad shop seniority roster, account of not complying with Rule 32 of our agreement and when, and if the railroad hired me, I would have to begin as a new employe as far as seniority was concerned. Upon checking the seniority roster I found this to be true and that the carrier had hired three men, one February 1959, and two April 1959. Upon checking with my local union 429, I found that they weren't members, when they were hired. I had and still have a paid up union card. My local chairman and I wrote to the general chairman of the firemen and oilers telling him as to what had happened.

Mr. W. B. Hayes, general chairman of fireman and oilers wrote to me December 15, 1959, telling me that registering for unemployment benefits was immaterial and irrelevant and had nothing to do with Rule 32 of our agreement, that I would have to actually prove and have evidence that I did leave my name and address at the office.

"No oral hearing is requested at this time. I have given all facts as I know them. Mr. W. B. Hayes, had a copy of all letters from me to him and from him to me, and will by request be submitted to you."

but Mr. Laherty has submitted none of this alleged correspondence in an effort to establish his claim — it would appear, rather, that he expects the Second Division to request this alleged correspondence from General Chairman Hayes.

Nothing but unsupported allegations has been presented by Claimant Laherty in support of his alleged claim, and these unsupported allegations are clearly shown by the record in this case, including Mr. Laherty's own purported ex parte submission, to be wholly without substance. Unsupported allegations of this nature do not constitute evidence, and the burden of proof which rests upon the party asserting a claim has clearly not been sustained in this case.

For each and all of the foregoing reasons the carrier respectfully requests the Second Division, National Railroad Adjustment Board, to dismiss this claim for want of jurisdiction, or to deny it in its entirety.

All data submitted in support of the carrier's position have been heretofore submitted to Mr. Laherty, or to his duly accredited representative.

Except as herein expressly admitted, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, deny each and every, all and singular, the allegations of the petitioner in alleged unadjusted dispute, claim or grievance.

For each and all of the foregoing reasons, the Missouri-Kansas-Texas Railroad Company and Missouri-Kansas-Texas Railroad Company of Texas, and each of them, respectfully request the Second Division, National Railroad Adjustment Board, deny said claim and grant said railroad companies, and each of them, such other relief to which they may be entitled.

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 employees 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 record shows the petitioner instituted proceedings before this Division of the Board on May 25, 1960, appealing from the decision of the highest designated officer of the carrier which was rendered on February 6, 1959. This claim is barred by the provisions of Rule 19(c) of the controlling agreement.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of October 1960.