

Award No. 3877

Docket No. 3266

2-EJ&E-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 88, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O.
(Carmen)**

ELGIN, JOLIET AND EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they:

(a) Improperly continue to carry Freight Service Engineer John Losik on the Carmen Helper's seniority roster.

(b) Refused to remove the name of Freight Service Engineer John Losik from the Carmen Helper's seniority roster, in violation of Rule 20 of the current working agreement.

2. That accordingly, the Carrier be ordered to remove the name of John Losik from the Carmen Helper's seniority roster, as he has not been a Carman Helper since August 19th, 1953.

EMPLOYEES' STATEMENT OF FACTS: On August 31, 1951, the Elgin, Joliet and Eastern Railway Company, hereinafter referred to as the carrier, employed John Losik as a carman helper at the point of Gary, Indiana. Employee Losik is shown on the carmen helper seniority roster as occupying position No. 14 with a seniority date of 8/31/51. As evidence thereof, copy of the carmen helpers' seniority roster dated June 30, 1958, covering carmen helpers employed by the carrier at Gary, Indiana, is submitted herewith and identified as Exhibit A.

On August 8, 1953, Employee John Losik was transferred to the Industrial Engineering Department and is shown on the carmen helpers' seniority roster as No. 14 "Freight Service Engineer—8/19/53".

This dispute has been progressed with the carrier up to and including the highest officer designated to handle such disputes, who declined it.

official or representative. However, the representative to whom the appeal is taken must refuse to consider the claim because of that fact and if he fails to do so and considers it solely on its merits then the failure to give such written notice of rejection to the subordinate official will be considered to have been waived.' "

Accordingly, it is the position of the carrier that the present grievance is barred from consideration by Section 1(b) Article V of the August 21, 1954, National Agreement in that the organization failed to comply with the terms thereof when progressing the original grievance in 1955 and that reinstitution of the grievance in 1956 amounted to the presentation of a dead issue which could not be reconsidered. The carrier refused to consider the merits of the case after the organization's failure to notify Mr. Niksch that his denial was being appealed, and in all subsequent correspondence stated that the subject was barred because of the organization's previous default.

In view of the foregoing, the carrier asks that the grievance be denied in its entirety.

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 waived right of appearance at hearing thereon.

On August 31, 1951 John Losik was employed by the Carrier as a Carman Helper in its Maintenance of Equipment Department at Gary, Indiana. On September 4, 1951 Losik was assigned to the position of Temporary Carman. He was promoted to the position of Freight Service Engineer in the Industrial Engineering Department on August 19, 1953. The Carrier states this is a supervisory position. It is agreed that the Freight Service Engineer position is outside the scope of the Carmen's Agreement. Losik continued to be listed as a Carmen Helper on the seniority roster at Gary.

It appears that on April 8, 1955 the Organization filed a grievance protesting the fact that Losik was still being kept on the seniority roster at Gary. That claim was denied by the appropriate Carrier officer. There is an apparent conflict between the parties concerning the details of such further handling as occurred on that claim. It should be possible to resolve this conflict on the basis of the parties' records. The Board desires this information for consideration of its relation to the claim presently before us. The case will be remanded to the property for development of the additional facts outlined above, such additional facts to be submitted within 90 days.

AWARD

Claim remanded per the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of November 1961.