



Award No. 6172
Docket No. 5992-I
2-N&W-I-71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Paul C. Dugan when award was rendered.

PARTIES TO DISPUTE:

ALBERT R. COSGROVE, Petitioner

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. Rated down from a carman to car repair helper.
2. Pressured off of the job and sent home on July 13, 1949 with a bad Hernia.
3. Being denied my rightful seniority through prejudice and intimidation through the Union Officials and the Railroad Officials.
4. And loss of pay to date.

EMPLOYEE'S STATEMENT OF FACTS: On March 8, 1929 I was made a car inspector by the New York, Chicago and St. Louis Railroad Company by the General Foreman, John Aud, and some more company officials. I discharged my duties as an employee at the shops at Madison, Illinois and under the direction of said Railroad Company at the time hereinbefore specified I was not under the jurisdiction of or a member of any union or bargaining agency.

In the year of 1934 I became a member of the Brotherhood of Railway Carmen of America and have paid dues as a member continuously to date.

After being transferred to the Car Department as of the 8th of March, 1929, I worked as a Car Inspector from March 8, 1929 to December 27, 1931 and was furloughed to February 25, 1932.

I was called back to work and worked as a car repair helper and car oiler and I never chose to remain as a car repair helper and a car oiler as the railroad officials and the ex coal miners claim one place; they claim I chose and then they claim I agreed and then the claim I signed. I want them to produce something I have signed.

1. No rule has been cited as having been violated.

In Second Division Award 5526, Referee Dugan, your Board held:

"The burden is on the petitioner to specify the rule or rules that are allegedly claimed to have been violated. Failing to do this, we therefore cannot adjudicate the merits of the claim and are compelled to dismiss the claim."

2. Exhibit D, dated September 12, 1946, is a joint statement of facts concerning the seniority status of Albert R. Cosgrove. This statement was signed by Carrier's Supervisor of Labor Schedules and General Car Foreman, as well as the Carman's General Chairman and Local Chairman. This statement definitely establishes Mr. Cosgrove's seniority date as February 23, 1932 and as a carman helper.

3. Exhibit A is a Memorandum of Agreement signed on May 10, 1949, providing, among other things, that carman helpers who had four or more years of experience in carman mechanic's work must elect to remain as a carman or revert to carman helper status. This provision was applicable to Mr. Cosgrove. Exhibit B, dated July 29, 1949, and signed by the General Car Foreman and the Local Committee, reveals that every effort was made by both the carrier and the organization to explain the May 10, 1949 agreement to Mr. Cosgrove and endeavor to have him comply with its provisions. This letter further reveals that only the arbitrary and capricious actions on the part of Mr. Cosgrove deprived him of employment.

Carrier categorically denies the four items presented in the Statement of Claim. The discussion of Items 1 and 3 above establishes conclusively that every reasonable effort was made by both the carrier and the organization to explain the situation to Mr. Cosgrove in order that he would comply with agreements between the carrier and his organization.

There is no record in carrier's files of a hernia suffered by Mr. Cosgrove and carrier has no knowledge of such. Mr. Cosgrove was not pressured off the job nor sent home for this or any other reason. Exhibit B clearly indicates that he elected to return home as he could not be permitted to work as a carman and he refused to work as a carman helper. The carrier denies any knowledge of, or any responsibility for, the hernia.

As there is no basis for Items 1, 2 and 3, there is no merit to Item 4 of this claim.

Carrier respectfully requests that this case be dismissed or 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 employee or employees involved in this dispute are respectively carrier and employee 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.

It is clear from the record that the claim the Petitioner is attempting to assert before this Board was not handled on the property of the Carrier in accordance with the provisions of the applicable collective bargaining agreement and as required by Section 3, First (i) of the Railway Labor Act and Circular No. 1 of the National Railroad Adjustment Board. Therefore, the claim is barred from consideration by the Division and will be dismissed.

AWARD

Claim dismissed.

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

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 8th day of October, 1971.