

The Second Division consisted of the regular members and in addition Referee Peter R. Meyers when award was rendered.

(John W. Adkins, Jr.
Parties to Dispute: (
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employees:

The C&O Railway Co., refuses to rehire me as a Machinist under the Railroad Retirement Disability Act, because I was Dismissed as Machinist at Thurmond, W. Va. in 1963.

How can the carrier be justified in my dismissal if the records show that the Officials in protecting the Carrier, violated my Rights of Protection given me under the same Agreement they used to Dismiss me?

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 employes 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.

Claimant, John W. Adkins, Jr., appeared and presented his claim orally to the Second Division.

Claimant, John W. Adkins, Jr., has filed an ex parte submission claiming that the Carrier wrongfully refused to rehire him because he had been terminated by the Carrier from a machinist job in 1963.

Claimant was first employed by the Carrier in 1944 and held various positions with the Carrier until his termination in 1963. In December, 1963, Claimant was charged by the Carrier with leaving his job without permission and falsifying a time card. Claimant was given a hearing and subsequently terminated on December 27, 1963. Neither the Organization nor the Claimant appealed the decision to terminate him.

Seven years later, in 1970, Claimant sent a letter to the Carrier requesting reinstatement. The Carrier refused to reinstate or commence requalification procedures for him at that time.

Nine years after that, the Carrier once again denied the Claimant reemployment and informed him that it is the Carrier's policy to not reemploy a terminated employe.

Claimant argues that the Carrier has rehired terminated employees and, therefore, he is entitled to reinstatement. Claimant cites two examples of employees who he states had been terminated and were later rehired.

The Carrier argues several points in support of its position that the claim be denied:

1. The Claimant was not an employee of the Carrier when the dispute was filed and, therefore, Claimant is not subject to or governed by the labor contract between the Carrier and the Organization;
2. The claim is procedurally defective in that there was no on-property handling of the matter through the normal grievance procedure, including a conference with the Claimant;
3. This Board lacks jurisdiction to consider the dispute.

Carrier argues that since the claimant was not an employee, he is not within the jurisdiction of the Board; and, therefore, the Board has no authority to consider his petition.

Carrier points to Section 3, First (i) of the Railway Labor Act which states:

"The disputes between an employee or group of employees and carrier or carriers growing out of grievances or out agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate Division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The Carrier argues that the instant claim was not handled in accordance with the above procedures. Since Adkins has failed to follow the requisite guidelines for the orderly and efficient resolution of disputes, the Carrier argues that the claim is improperly before the Board and must be dismissed.

This Board has reviewed the file and heard the arguments of the Claimant orally in a referee hearing. It has fully considered the arguments of the employee.

Pursuant to Section 1, Fifth of the Railway Labor Act, this Board is compelled to dismiss the claim for lack of jurisdiction. Section 1, Fifth of the Railway Labor Act defines "employee" as follows:

"The term 'employee' as used herein includes every person in the service of a carrier (subject to its continuing authority to supervise and direct the manner of rendition of his service) who performs

any work defined as that of an employee or subordinate official in the orders of the Interstate Commerce Commission now in effect, and as the same may be amended or interpreted by orders hereafter entered by the Commission pursuant to the authority which is conferred upon it to enter orders amending or interpreting such existing orders: ... (Emphasis added.)

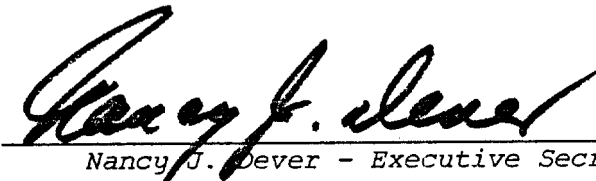
Clearly, Mr. Adkins is not an employee of the Carrier. Consequently, this Board lacks jurisdiction in this case.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:



Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 23rd day of May 1984.