

Award No. 285

Docket No. 298

2-Va-SM-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Harry C. Smoot, sheet metal worker, formerly employed at Princeton, West Virginia, be restored to service with seniority unimpaired and compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker Harry C. Smoot was notified at 3:28 P. M. on December 13, 1933, that he was removed from service on the allegation that his wages had been garnisheed. No investigation held to determine facts.

POSITION OF EMPLOYEES: Sheet Metal Worker Smoot was discriminated against by being taken out of service as he was only working three (3) days per week, and could not be expected to meet all of his obligations with a family of six. In this case, he did satisfy his creditor within a few hours on the same date he was taken out of service, but on calling up the superintendent of motive power, was told that the papers on the case had gone to Mr. Markham at Norfolk, Virginia. It seems rather strange that these papers would be rushed to Norfolk on the same date Sheet Metal Worker Smoot was taken out of service, particularly when the officials at the point knew he (Smoot) was making an effort to satisfy his creditor. Further, there were many other similar cases and none of these men were taken out of service permanently. The real reason for Sheet Metal Worker Smoot's dismissal was that he was opposing the company union and assisting in forming A. F. of L. unions at the point. Sheet Metal Worker Smoot personally requested an investigation, but was refused, both by the master mechanic and the superintendent of motive power, who is located at the same point, as per the second paragraph of Exhibit E, which we quote below for your ready reference:

"I applied in person to Mr. F. S. Tinder, Shop Superintendent, within five days after I was held out of service of the said Company for a hearing of my case: thereupon Mr. Tinder referred me to Mr. J. W. Sasser, Superintendent of Motive Power. Then I applied to Mr. Sasser in person, petitioning him for consideration of my case, but he refused to give me a hearing, and referred me to Circular No. 4 which is an order signed by Mr. H. C. Hix, then President of the Virginian Railway Company, and advised me that it would be necessary for me to confer with Mr. Markham, Assistant to President Hix. Mr. Markham's office was in Norfolk, Va., which is approximately 350 miles from Princeton, West Virginia."

of this Act,***." As hereinbefore set forth in the Statement of Facts, Mr. Smoot was dismissed December 13, 1933, and no action was taken by him or in his behalf until receipt of said letter from J. W. Munsey, dated February 24, 1938. Plainly, this was not a case pending and unadjusted on the date of the approval of the Act, and, for this reason, carrier asserts that the National Railroad Adjustment Board, Second Division, has no jurisdiction to docket, consider, hear or enter any order in connection with this alleged dispute.

For the foregoing reasons, it is respectfully submitted that the question of jurisdiction of the Board herein presented is a separate issue to be determined before proceeding further in this case, that the Board, before assuming jurisdiction, set the case down for oral hearing solely on the question of jurisdiction, and that the carrier be duly advised of the Board's decision on this question so that the carrier may take such other action as it deems necessary to protect its interests.

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.

The parties to said dispute were given due notice of hearing thereon.

Record indicates that Harry C. Smoot was discharged for violation of President's Circular No. 4, dated December 15, 1926, for having his wages garnisheed.

The record also indicates that there were circumstances which should be taken into consideration in the assessing of this discipline.

AWARD

Harry C. Smoot shall be reinstated with seniority unimpaired, but without pay for time lost.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of November, 1938.