

Award No. 330
Docket No. 335
2-TC-MA-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That J. H. Culbertson, machinist, was removed from the seniority list in violation of the agreement between the Tennessee Central Railway Company and its shop employes and should be placed back on the seniority list with his seniority unimpaired.

EMPLOYEES' STATEMENT OF FACTS: That J. H. Culbertson, machinist, was employed at the Nashville shop of the carrier, entering their service about July of 1918; that in October of 1933, he was furloughed on account of reduction in the force at Nashville shop of the carrier.

That because of the length of time from service with the carrier, it was necessary to secure employment elsewhere and he did secure employment with the Nashville Bridge Company of Nashville, Tennessee.

That on August 17, 1936, nine machinists and two machinist apprentices were laid off at the Nashville shop of the carrier.

That the shops of the carrier at Nashville were working under a five day, forty hour per week bulletin in August of 1936.

That on August 19, 1936, Culbertson received a notice from Mr. J. D. Brewer, acting master mechanic, to report for work on September 1, 1936.

That August 26, 1936, the committee addressed a letter to Mr. McMurtry Gaines, vice president of the carrier, protesting the calling of this machinist when senior laid off men were available and the increasing of the force while the shop was working short time, also protesting the action of the acting master mechanic, Mr. Brewer, in refusing to grant certain employes leave of absence while other men were granted leave.

That while this case was pending, Culbertson requested leave of absence for ninety (90) days, on September 5, 1936.

That September 9, 1936, Culbertson received from Mr. J. D. Brewer, acting master mechanic, a letter which stated in part:

"Your failure to report for duty, after being called upon, causes you to lose your seniority rights with this company and we are this date removing your name from the seniority roster of Machinists."

POSITION OF EMPLOYEES: This claim has been handled in accordance with established practice on the Tennessee Central Railway Company.

when they are needed, and further, that it would not be equitable to permit employes to engage in outside employment and continue at the same time to accumulate seniority indefinitely. One of the primary purposes of seniority is the right to return to service after furlough, and if an employe does not wish to take advantage of this right when the opportunity presents, he must take the penalty provided for in the schedule agreement between his duly authorized representatives and the carrier. Were the carrier forced to continue to carry men on the seniority roster under such conditions as presented in this case, such men may never return to service, but they would be a constant threat to junior employes who protected the service through possible dull periods, as they could bump the junior men and throw them out of employment at their pleasure. Any such handling would void the rules already contained in the current agreement with the employes, and would have a demoralizing effect.

Further, in support of the position of the carrier, copy of Decision 1673, Docket 2054 of the United States Railroad Labor Board is submitted, marked Exhibit G, from which is quoted from the opinion rendered as follows:

"The Railroad Labor Board feels that in accordance with the language of the rule if in the restoration of forces men are not available within a reasonable time, the carrier is justified in filling their positions and thereby considering them as having left the service."

The opinion of the Railroad Labor Board was based on the portion of Rule 27 of the National Agreement, reading:

"In the restoration of forces, senior laid-off men will be given preference of reemployment, if available, within a reasonable time, and shall be returned to their former positions * * *"

and similar phrase included in Addendum No. 6 to Decision No. 222, promulgated by the Railroad Labor Board. Attention is called to the fact that Rule 21 of the agreement in effect between this carrier and its employes contains similar phrase and is amplified by the addition of the last paragraph thereof, the last sentence of which provides for forfeiture of seniority rights on failure to return to service.

There is also submitted copy of Decision 2498, Docket 3866, of the United States Railroad Labor Board, marked Exhibit H, from which is quoted from the opinion rendered as follows:

"The evidence indicates the carrier erred when it failed to restore Mr. Sheehan to the service when a vacancy first arose and to which he was entitled in accordance with his seniority standing; further, that when the carrier did offer to reinstate Mr. Sheehan to the service in a position covered by the same classification under which he had formerly worked, he surrendered his rights in refusing to accept the position offered him."

The carrier submits that no rule of the agreement was violated in removing J. H. Culbertson's name from the seniority roster when he failed to return to work after being notified, and further, that the rules were strictly adhered to, and, therefore, requests that your Honorable Board deny the claim of the employes.

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.

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

It was disclosed at the hearing on this case that Machinist Culbertson was called to perform so-called "extra" and "fill in" service, the amount of which, in prospective, might be much or little.

Culbertson had been furloughed for a period of nearly three years before called to return to the service of the carrier.

In view of all the circumstances, there was no real justification for not granting Culbertson leave of absence for a reasonable period so as to protect his seniority.

AWARD

Machinist Culbertson shall have his seniority with the carrier restored.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 18th day of April, 1939.