

**Award No. 331**

**Docket No. 336**

**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 Elgie Byrd, machinist, was removed from the seniority list in violation of the agreement between the Tennessee Central Railway Company and its employees and should be placed back on the seniority list with his seniority unimpaired.

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

That because of the length of time of this furlough it was necessary to secure employment elsewhere and he did secure employment with the DuPont Company of Nashville, Tennessee.

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

That the shops of the carrier at Nashville were working under a five day, forty hour week schedule in August and September of 1938.

That on September 9, 1936, Byrd received a notice from Mr. J. D. Brewer, acting master mechanic, to report for work September 14, 1936.

That prior to September 9, or on August 26, the committee addressed a letter to Mr. McMurry Gaines, vice president of the carrier, protesting the calling of mechanics when senior laid off mechanics were available, increasing the force while the shop was working short time and protesting the action of Mr. Brewer, acting master mechanic, in refusing to grant certain employees leave of absence while other employees were granted leave.

That while this protest was pending, Byrd contacted Acting Master Mechanic Brewer about September 10, and requested leave of absence until the case was settled.

That September 21, 1936, Byrd received a letter from Mr. J. D. Brewer, acting master mechanic, which stated in part:

"You have failed to report for work and in view of your failure to do so you are hereby notified that your name has been removed from the seniority list."

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 employees 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 employees, 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 employees 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 that 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 Elgie Byrd'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 employees.

**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.

The parties to said dispute waived right of appearance at hearing thereon.

The evidence discloses that Machinist Byrd was called to perform so-called "extra" and "fill in" service, the amount of which, in prospective, might be much or little.

Byrd 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 Byrd leave of absence for a reasonable period so as to protect his seniority.

#### AWARD

Machinist Byrd 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.