

Award No. 332

Docket No. 343

2-VA-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Machinist Helper J. W. Arthur should be paid the difference between the rate of a laborer and that of a machinist helper for all time worked between August 11, 1938, and September 12, 1938, both dates inclusive. He should also be allowed time and one-half for all Sundays and holidays worked, during above mentioned period, at helper's rate.

EMPLOYEES' STATEMENT OF FACTS: On August 11, 1938, the National Railroad Adjustment Board, Second Division thereof, gave a decision, Award No. 256, Docket No. 275, in which The Virginian Railway Company was ordered to restore J. W. Arthur to his former position of machinist helper with seniority unimpaired. This award was made as of August 11, 1938, but J. W. Arthur was not given the helper's rate until September 12, 1938; hence our claim is that management neglected to apply the award for a period of thirty-two days, during which time J. W. Arthur was deprived of his just right to helper's pay for the time worked by him between above referred to dates.

As proof of the above statement of facts we present as Exhibit A copy of letter dated November 30, 1938, written by Mr. L. A. Markham, assistant to president, The Virginian Railway Company, wherein admission is made that Mr. Arthur was not restored to helper's rate until September 12, 1938; also, in the second paragraph thereof, he (Mr. Markham) declined to pay the difference as herein claimed.

CARRIER'S STATEMENT OF FACTS: Award No. 256, Docket No. 275, of the National Railroad Adjustment Board, Second Division, upon which this claim is predicated, is dated at Chicago, Ill., August 11, 1938, and was received by the carrier about 10:30 A. M., Saturday, August 13, 1938.

POSITION OF CARRIER: Award No. 256, Docket No. 275, and the Order accompanying it are dated at Chicago, Ill., August 11, 1938. The Order is addressed to Mr. L. A. Markham, assistant to president, and was delivered in his office by United States Mail about 10:30 A. M., Saturday, August 13, 1938.

Subsequent to its receipt, to have it applied, it was necessary for the several departments through which it had to pass to be advised, which was done by correspondence in the regular manner such matters are handled.

Award of the Board in this case does not name a date award shall become effective. The Order, however, accompanying the award specifies that if the award includes a requirement for the payment of money, to pay the employee the sum to which he is entitled under the award on or before September 1, 1938.

Setting the date of September 1, 1938, (22 days from the date of the award) for the payment of any money indicates that the Board recognizes that from a practical standpoint the railway company should have a reasonable time to put into effect the adjustment of working conditions or personnel required by any award of the Board.

Arthur was restored to service as a machinist helper about 30 days from the date of the Board's award, which the railway company feels in view of the time set by the Board for the payment of any money, was not an unusual length of time to comply with the award.

In connection with this case we submit Exhibit A, letters written by Mr. J. W. Munsey, president, The Virginian System Federation No. 40, Railway Employees' Department, American Federation of Labor, dated November 25 and December 21, 1938, addressed to Mr. L. A. Markham, assistant to president, The Virginian Railway Company, and Mr. Markham's replies dated November 30 and December 23, 1938.

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 Order of the Second Division of the National Railroad Adjustment Board that accompanied Award No. 256, Docket No. 275, directed The Virginian Railway Company to make effective Award No. 256 on or before September 1, 1938.

The carrier has made no showing that this award could not be applied within the period prescribed.

AWARD

Claim sustained as of September 1, 1938.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of April, 1939.