

Award No. 418

Docket No. 369

2-SP-CM-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

SOUTHERN PACIFIC COMPANY (PACIFIC LINES)

DISPUTE: CLAIM OF EMPLOYES: That Mr. L. E. Nelson be removed from service account of his being employed in violation of Rule 103 of the motive power and car department agreement.

EMPLOYES' STATEMENT OF FACTS: On November 23, 1937, Mr. L. E. Nelson was employed as a carman in the Southern Pacific Alameda Electric Shop. Mr. Nelson had never served an apprenticeship; neither had he the four years experience as a carman, thus qualifying him for this employment, as provided for in Rule 103 of the existing agreement between the Southern Pacific Company and System Federation No. 114.

POSITION OF EMPLOYES: Rule 103 of the agreement between the Southern Pacific Company and System Federation No. 114 provides:

"Any man who has served an apprenticeship or has had four (4) years' practical experience at his class of carmen's work, who can with the aid of tools, with or without drawings, lay out, build, or perform the work of his craft or occupation in a mechanical manner, shall constitute a mechanic of his craft."

It is our position that when the company employs a mechanic that they are obligated to ascertain whether or not he has had the service required in Rule 103, either having served his apprenticeship or had four (4) years' experience at carman's work.

We have asked the company many times to furnish our committee with the service record of new men employed and they have continually refused to do so. Because of this attitude of the company we have been unable to get this information until the employee in certain cases had been working several months. In this case it was not until we asked Mr. Nelson to join the organization that we knew he had been employed in violation of our agreement. We also found that he had been employed at Sacramento the previous year for eleven (11) months; this also in violation of the rule. As soon as we found that Mr. Nelson did not have the service required we immediately protested his employment.

At present Mr. Nelson is employed as a mechanic while hundreds of carmen with many years of service are walking the street. Therefore, it is our position that Mr. Nelson should be dismissed from service and that a mechanic with the experience provided for in Rule 103 be employed.

Three days after Nelson was furloughed due to reduction in forces in Sacramento general shops, he was permitted on November 23, 1937, to go to work at West Alameda car shops, under the provisions of Rule 23 of the agreement which reads as follows:

"Rule 23. If additional men are needed in excess of those available under Rule 29 (e), qualified men at other points, who are laid off will, in accordance with their seniority be permitted to work in the class and craft at the nearest point where additional men are needed, subject to return to home point, when notified, with seniority unimpaired. Such transfer to be made without expense to the Company, except that such employees will be furnished free transportation."

Rule 29 (e), which is referred to in Rule 23, previously quoted, reads as follows:

"(e) When forces are restored, the procedure covered in Section (a) of this rule will be reversed. Employees will be called back in accordance with their seniority, if qualified and available, within a reasonable time, and shall, if possible, be returned to their former positions."

Notwithstanding the fact that Nelson is and has been fully qualified from a practical standpoint to perform carmen's work, and had rendered entirely satisfactory service to the carrier in that capacity for a period of over a year and three months before a protest of his lack of qualifications under Rule 103 was made by the Brotherhood of Railway Carmen, we now have a demand from that organization that he be removed from service. Rule 39 of the agreement pertaining to "DISCIPLINE-SUSPENSION-DISMISSAL" reads as follows:

"Rule 39. No employe shall be disciplined or dismissed without a fair hearing by the proper officer of the Company. Suspension in proper cases pending a hearing which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe shall in writing, be apprised of the precise charge against him, be given reasonable opportunity to secure the presence of necessary witnesses, and shall have the right to be represented as provided for in Rule 38. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from said suspension or dismissal. Stenographic report of hearing will be taken if requested and employe's representative will be furnished with a copy." (Underlining for emphasis.)

Nelson has not committed any offense such as to justify charges being preferred, or which could be used as a basis for an investigation leading to his ultimate removal from the service.

CONCLUSION

In view of all the facts in this particular case, the request of the organization for the removal of Mr. Nelson from the service is not justified and should be denied.

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 waived right of appearance at hearing thereon.

This dispute presents a claim for the removal from service of Carman L. E. Nelson on the grounds that he was given employment in violation of Rule 103 of the existing agreement.

The evidence submitted by the parties is not conclusive that Rule 103 was violated. The parties to the dispute should investigate this case further, determine the facts and dispose of the dispute on the basis of the provisions of Rule 103.

AWARD

Dispute remanded to the interested parties without prejudice to the right of either party to resubmit the claim in the event of failure to reach a settlement.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of December, 1939.