

Award No. 441

Docket No. 469

2-MP-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That seniority of Machinist J. A. Chadwick, Sedalia, Missouri, be restored as of date employed (year of 1922) at Sedalia.

EMPLOYEES' STATEMENT OF FACTS: That employe relationship with Missouri Pacific Railroad Company of Machinist J. A. Chadwick, Sedalia, Missouri, was either erroneously or arbitrarily terminated effective date of July 1, 1935.

POSITION OF EMPLOYEES: It is our position that Machinist Chadwick was either erroneously or arbitrarily omitted from seniority roster of July 1, 1935, and that subsequent to that date management has declined correction of controversy notwithstanding the fact that Rule 25 (c) has been complied with by the employes.

"Rule 25. (c) Separate seniority lists will be compiled by the Shop Superintendent and/or Master Mechanic as of January first and July first of each year for each craft and seniority subdivision thereof as listed hereunder. Seniority dates shall be considered permanently established if not protested in writing within thirty (30) days from time of second posting. Seniority rosters will be approved by Shop Superintendent and/or Master Mechanic and local committee, and copies thereof will be furnished the local and general committees."

It is our contention that no act on the part of Mr. Chadwick or circumstances in connection with his personal injury or settlement thereto in any way whatsoever involved his seniority status or employe relationship with the Missouri Pacific Railroad Company. We further contend that Machinist Chadwick was not totally and permanently disabled prior to October 14, 1937, and to substantiate our position we respectfully submit employes' Exhibit P, copy of Chadwick's hospital record.

Exhibits A to H, copies of letters and statement, are conclusive that his employe relationship was not involved and obviously not questioned prior to January 1, 1936, and not definitely prior to October 14, 1937.

To further substantiate our position we respectfully submit Exhibits I, J, and K, copies of affidavits, wherein Superintendent Callendar notified Mr. Chadwick to report for work during summer of 1935. Exhibits L to O, inclusive, indicate that Mr. Chadwick was not in physical condition to resume service at that time.

Evidence herein is conclusive that Machinist Chadwick has been unjustly or erroneously deprived of his proper seniority status; consequently, your Honorable Board should properly sustain claim of the employees.

CARRIER'S STATEMENT OF FACTS: Mr. Chadwick was employed as machinist, Sedalia, March 8, 1909, to July 1, 1922; re-employed June 22, 1923.

October 11, 1933, Mr. Chadwick sustained injuries that debarred him from further employment as machinist account physical disability and his name was removed from the employees' seniority roster on July 13, 1935.

POSITION OF CARRIER: Employees' request that Mr. Chadwick's name be restored to the employees' seniority roster was declined by the carrier. It was not our practice in the application of rules of wage agreement then in effect to retain on the seniority roster names of employees who were debarred from employment account their physical condition, as expressed in carrier's decision to General Chairman Keller in letter dated July 20, 1936, reading:

"Your letter June 10 appealing from decision of Chief Mechanical Officer Garber and confirming conference in my office the 16th instant.

The facts in the case are that Chadwick sustained injuries that debarred him from further employment as machinist account physical disabilities on October 11, 1933.

Chadwick was a patient at the St. Louis Hospital and Chief Surgeon Zeinert reports him as being totally and permanently disabled as a machinist.

As stated in our conference, it is not our practice to retain the names of former employes on seniority rosters who are ineligible for active service account physical disabilities. Further, rules of the Interstate Commerce Commission governing issuance of free transportation preclude the issuance of such to former employes under circumstances which surround Mr. Chadwick's case.

Your request that Mr. Chadwick's name be restored to the seniority roster and that he be furnished transportation on the same basis as is the practice of furnishing to employes in active service is respectfully declined."

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.

October 11, 1933, Mr. Chadwick sustained serious injuries to his hand in an accident while employed as a machinist. His name was removed from the seniority roster July 1, 1935.

The records in the transaction are somewhat meagre as to circumstances relating to the removal of Mr. Chadwick's name from the seniority roster at that date. While he was incapacitated from his usual employment as a machinist, it would appear from letter of chief surgeon to superintendent of shops (January 21, 1935) that there was still a question about his being able to again resume employment, and the first records that indicate a report

from the chief surgeon that he was totally and permanently disabled appear in a report under date of June 24, 1936.

In view of all the circumstances surrounding this case Mr. Chadwick's name should not have been removed from the seniority roster until after report of his total and permanent disability was made June 24, 1936.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of March, 1940.