

Award No. 456

Docket No. 439

2-Va.-BK-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Blacksmith E. G. Damewood was unjustly furloughed by the Virginian Railway Company on December 1, 1938, and that an employe, junior in point of service, was permitted to remain in the service and assigned to work which said E. G. Damewood, if given a fair trial, could have performed. We claim that he is justly entitled to an opportunity to demonstrate, through a fair trial, his ability to perform the work now being performed by said junior employe, namely Owen Hutcheson, and that having demonstrated his ability to perform said work he (E. G. Damewood) be returned to service and paid for all time lost on account of his unjust furlough.

EMPLOYEES' STATEMENT OF FACTS: Blacksmith E. G. Damewood, having served a helper-apprenticeship in the blacksmith shop of the Virginian Railway Company, located at Princeton, W. Va., was awarded an apprenticeship certificate by said company as of October 20, 1925, and thereafter assigned to perform blacksmith work at mechanic's rate of pay for such periods of time as management had need of his service as a blacksmith and that no complaint was ever lodged against his ability as a mechanic until he attempted to displace a junior employe on the spring job, which junior employe happened to be Owen Hutcheson, the son of the general foreman of the blacksmith shop, and E. G. Damewood was disqualified that this junior employe might thus be favored and remain in the service.

POSITION OF EMPLOYEES: Since the Virginian Railway Company did as of October 20, 1925, issue a certificate of apprenticeship to Mr. E. G. Damewood (see Exhibit A) in which the company states that Mr. Damewood was experienced in the spring department, therefore, their present claim that he is not qualified should be viewed with suspicion and especially so since the validity of such claim permits the son of the very same official, who passes on said claim, to remain in the service though junior in point of service to Damewood.

The record of a hearing held in the office of the superintendent of motive power as of February 24, 1939, is submitted as Exhibit B, and the attention of the National Railroad Adjustment Board is respectfully called to the following incidents thereof:

First: The acts of management in introducing certain letters as evidence therein which letters were supposed to be from certain helpers in which these helpers were supposed to have given to management their written opinions of Mr. Damewood's ability as a mechanic. We point out that

Damewood's name from the blacksmith shop's seniority list, which will leave Hutcheson's seniority in its proper place.

An employee's seniority rights are valuable, substantial and important and he should not be deprived of these rights by fraud, but only as the schedule of rules provide.

In connection with the employees' claim for time lost the carrier contends that it cannot be supported by Rule 1 (a) of the existing agreement, which reads:

"(a). Eight (8) hours shall constitute a day's work and eight (8) hours' work will be required for eight (8) hours' pay."

said rule requiring eight (8) hours' work for eight (8) hours' pay.

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 were given due notice of hearing thereon.

The application of Rule 16 is the issue in this dispute. Paragraph (a) authorizes:

"* * * the officer in charge to be the judge."

Paragraph (b) states:

"An employee exercising his seniority under this rule, if, after a fair trial fails to qualify, shall retain his seniority rights, but may not displace any regularly assigned employee."

While Blacksmith Damewood had been given a trial on spring work in 1935 and was disqualified, the Division, after giving due weight to all the facts of record, is of the opinion that he should be given another opportunity to demonstrate his ability to perform the work in question, without payment for time lost.

AWARD

Claim to be disposed of in accordance with the aforesaid findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1940.