

Award No. 527
Docket No. 500
2-M&StL-EW-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William E. Helander when award was rendered.

PARTIES TO DISPUTE:

**INTERNATIONAL BROTHERHOOD OF ELECTRICAL
WORKERS**

THE MINNEAPOLIS AND ST. LOUIS RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That Rule 29 was violated when Electrician Helper Werner G. Johnson was displaced from his position on June 2, 1939.

(b) That he be compensated for all time lost as a consequence of his being improperly displaced.

(c) That the seniority date of Richard C. McGovern should be June 2, 1939.

EMPLOYEES' STATEMENT OF FACTS: On September 24, 1938, Richard C. McGovern was dismissed from the service of the Minneapolis and St. Louis Railroad Company, hereinafter referred to as the company, because of his having appropriated for his own use certain railroad company property.

On October 3, 1938, a bulletin was posted calling for bids for an electrician helper at the Cedar Lake shops to fill the permanent vacancy caused by the dismissal of Richard C. McGovern. This position was assigned to Electrician Helper, Werner G. Johnson.

The seniority roster of employees at Cedar Lake shops was posted as of January 1, 1939, and Richard C. McGovern's name did not appear thereupon.

On May 26, 1939, Werner G. Johnson was notified that on June 2, 1939, he would be laid off from the service of the company, at which time Richard C. McGovern was called to work this position and has held same since that date.

POSITION OF EMPLOYEES: The employees claim that since Electrician Helper, Richard C. McGovern was discharged (See Exhibit A) and so long as the position was bulletined as a permanent one (See Exhibit B) and was assigned to Electrician Helper, Werner G. Johnson, he holds no seniority other than the last date of entering the employment of the company.

After a hearing by certain subordinate officials of the company, Mr. McGovern did not appeal the case to the highest general official, as Rule 33 of the existing agreement, effective November 12, 1934, between the company and System Federation No. 15, of which the International Brotherhood of Electrical Workers is a part of, provides for, and which reads as follows:

'If Elmer A. Dickey was dismissed from the service and later voluntarily reinstated by the Railroad, with full seniority rights unimpaired, would you file objections to such reinstatement?'

Each case where an employe is disciplined by suspending him from service for a specified number of days or dismissal will be considered by me on its merits and whenever I ask for the reinstatement of an employe discharged, I expect that that means restoration of his seniority rights unimpaired and that would be my position if the record showed that Elmer A. Dickey was dismissed from the service. However, in this case, I still understand that he has only been disciplined by being kept out of service a specified number of days and I feel that the offense that he committed has been adequately taken care of by the loss of time up to date and I sincerely trust that he will be reinstated in the service at the earliest possible date."

The position of the general chairman, Brotherhood of Railway Carmen of America, is stated in letter he addressed to carrier's superintendent motive power dated June 26, 1939, reading:

"I have recently discussed with you informally the case of Mr. R. E. Crowe, car repairer of Peoria, Ill., who was dismissed from service on July 12th, 1937, account of too many garnishees. At these discussions you intimated to me that you would review this case if Mr. Crowe would put his financial affairs in such shape that he would not embarrass this railroad by having garnishees placed against his checks.

I am now in a position to inform you that Mr. R. E. Crowe has now given me those assurances.

I trust you can now see your way clear to reinstate Mr. R. E. Crowe with seniority rights unimpaired, as my organization feels that Mr. Crowe has suffered enough."

POSITION OF CARRIER: McGovern was discharged for appropriating and removing from company property, a small quantity of lubricating oil, valued at 40 cents. He was given a hearing at which the charge against him was sustained and was reinstated after an operation had been performed that permitted him to improve his health and gain control of his conduct.

The carrier denies that the reinstatement of McGovern with former seniority rights unimpaired was in violation of Rule No. 29, or the intent of that rule, notwithstanding the fact that a seniority list was issued early in 1939 and sixty days, or more, had elapsed before he was reinstated on June 5, 1939.

The position of the carrier that it had the right to reinstate McGovern with seniority unimpaired is supported by the fact that the awards of the various Divisions of the National Railroad Adjustment Board show that claims for reinstatement made by the organizations are, without exception, for reinstatement with seniority rights unimpaired.

Reinstatement on that basis, to the best of our knowledge, is universal insofar as railroad employes are concerned.

On the basis of the facts herein outlined, we feel that the claim 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 were given due notice of hearing thereon.

McGovern, according to the statement of management, appealed for reinstatement on November 7, 1938. He did not make any protest to the seniority list published as of January 1, 1939, as provided for in Rule 29 of agreement. His seniority date should be June 2, 1939, the date of his return to service.

Johnson, having established his seniority date on October 3, 1938, should be restored to service and compensated for time lost.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of January, 1941.