

Award No. 622

Docket No. 600

2-T&P-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That G. P. Harp, R. A. Lowe and J. E. Smothers, carmen, at Lancaster shop, Fort Worth, Texas, be compensated for all time lost from January 10, 1938, until restored to service, account of failure of management to comply with current agreement, effective April 1, 1937.

EMPLOYEES' STATEMENT OF FACTS: January 7, 1938, management decided to reduce expenses by reducing the force of carmen on the repair track and in the car shop, Fort Worth, Texas, eight men. Therefore, a bulletin was posted that date (Exhibit S) on which appeared the names of the eight youngest carmen in service, advising them, "with the close of days work Monday, January 10th" their services would terminate. Five of these men, Webb, Cox, Heard, Goad, and Shockley were working in the yards. The other three were working on the repair track. Since management intended to work the five jobs in the yards another bulletin was posted stating that vacancy existed in the yards for five men, and that bids for same would be received for same until noon January 12. Five men on the repair track, Harp, Lowe, Smothers, Dodd, and Honeycutt, and whose names do not appear on the bulletin (Exhibit S) as being furloughed were notified, that they would not work on the repair track or in the shop by the foreman. Therefore, in order to work during the reduction-in-force period and being senior to men in the yard, they chose to go to the yards. Dodd and Honeycutt placed no bids for the five jobs advertised but went to the car foreman and told which jobs they preferred and placed themselves accordingly. Harp, Lowe, and Smothers placed bids for the three remaining jobs with the car foreman giving copies to the local committee, but were told by the car foreman that before he could permit them to go to the yards to work it was necessary that they take a rules examination, although at one time or another all three of these men have worked in the yards. Therefore, these three men were forced to lose time until the force was increased at that point. In the meantime, the three younger men whose names appear on the bulletin as furloughed continued to work in the yards.

POSITION OF EMPLOYEES: Management violated Rule 18, Paragraph (c) reading as follows:

"Twenty-four (24) hours notice will be given before hours are reduced. If force is to be reduced, seventy-two (72) hours notice will be given the men affected before reduction is made and list will be furnished the local committee. * * *"

Nichols, January 25, 1939, at which time Mr. Nichols was advised that the requirements under Rule 85 were most definite and that we must continue to insist that employes, before being placed on car inspection assignments, have the knowledge as required by that rule; confirmed by letter of January 28, 1939, copy of which is submitted as Exhibit C.

We supposed that this again closed the case as it lay dead from the date of this conference, January 25, and the date of the letter, January 28, 1939, for a period of more than one year when, under date of March 9, 1940, Mr. Nichols indicated that he was going to submit this case to your Board.

Exhibit D is former Assistant Vice President Tobin's letter to Mr. Nichols of March 13, 1940, in reply to his of March 9, and would call the Board's particular attention to the third, fourth and fifth paragraphs of this letter reading:

"The question that is involved, as I understand it in your complaint is covered by decision rendered by the undersigned and Mechanical Superintendent Prendergast in our letter of January 28, 1939.

We have had nothing from you in the case since that time until your letter of March 9th, some 13 or 14 months later, which I feel is contrary to fair handling.

If you felt that you could not concur in our decision you should have notified us within a reasonable time. At any rate you may accept our letter above referred to as final."

If the three claimants in this case have been deprived of work, it is because of an act of their own as the management has been ready and willing to give them the required examination at any time and if and when they satisfactorily pass a reasonable examination on their qualifications under Association of American Railroads rules and Safety Appliance Laws to assign them as inspectors in accordance with their seniority.

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.

Car inspection is inherently responsible work. Rule 85 is a recognition of this fact and establishes particular qualifications for inspectors. The carrier can require an employe who wishes to be assigned to inspection work to take a written examination. Otherwise there would be evasion of the purpose of Rule 85. Rule 10 still operates unimpaired within its sphere, for an employe must still establish that he can perform the work properly. The carrier afforded the complaining employes proper and reasonable opportunities to take a written examination and there is no cause for complaint.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1941.