

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

**PARTIES TO DISPUTE:**

O. W. HAWHEE, ET AL

vs.

THE VIRGINIAN RAILWAY COMPANY

**DISPUTE: CLAIM OF EMPLOYEES:**

1. Recall and reinstatement of all strikers now on strike as of the seniority rule prior to the strike of 1922.
2. All employees or in other words the strike breakers who got their jobs after the strike, to be replaced by men now on strike, men who deserted their crafts and went back to have their seniority, prior to 1922, as well as the men who remained on strike to have their seniority to date from employment prior to 1922, to date of reinstatement, seniority to govern in replacement, as of the rules in effect prior to 1922.
3. Reinstatement and retirement on pensions of disabled or who may be over the age limit for employment, with annual passes for those who now remain on strike.
4. Seniority to date from employment, prior to strike date 1922, as the case may be, to time of replacement and after as the employees remain in service of the above company, with no penalty for remaining on strike as to jobs, passes or seniority.
5. Adequate compensation for time lost from strike date, 1922, to date of reinstatement to work, less any amount earned at other occupations during that period of time.

**FACTS AND POSITION OF PARTIES:** The petitioners state they are entitled to restoration of certain seniority rights, adequate compensation for time lost from the time they left the service to date of reinstatement to work.

The carrier states there was no dispute pending and unadjusted in behalf of such employees at the time the amended Railway Labor Act was approved and the Adjustment Board was created.

**OPINION OF THE DIVISION:** Section 3 (i) of the Railway Labor Act as amended June 21, 1934, provides:

"The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle

such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

This Board does not have jurisdiction in cases that were not pending and unadjusted on the date of approval of this Act.

The record in this case shows that the controversy was not made a dispute and there was no asserting of the claim until November 6, 1939.

This dispute was not pending and unadjusted within the meaning of the Amended Railway Labor Act on the date of approval of the Act (June 21, 1934); therefore, this Board is without jurisdiction to pass upon the petitioners' claim.

#### AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 9th day of April, 1942.