

Award No. 743  
Docket No. MC-44-21  
2-UP-I-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

**PARTIES TO DISPUTE:**

**ROBERT O'BRIEN, PETITIONER**

**vs.**

**UNION PACIFIC SYSTEM**

**DISPUTE: CLAIM OF EMPLOYEE:** Petitioner claims full compensation for time lost because of removal from service August 23, 1929 to August 31, 1931, amounting to \$4,468.80.

**FACTS AND POSITION OF PARTIES:** Petitioner states that he was unjustly dismissed and held out of service during the period mentioned above. The carrier states the matter was handled in the proper manner with the duly authorized representatives of the employees; that the petitioner was reinstated to service in the year 1931 as a matter of grace and leniency, and with the understanding that he was not entitled to pay for time out of service from August 23, 1929 to August 31, 1931; further, that this is not a case which was "pending and unadjusted" on date of approval of the Act, June 21, 1934.

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

"The disputes between an employe or group of employes 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 this matter was not placed before the carrier as a dispute until August 20, 1935.

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 petitioner's claim.

**AWARD**

Claim dismissed.

**NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division**

**ATTEST: J. L. Mindling  
Secretary**

Dated at Chicago, Illinois, this 13th day of April, 1942.