

Award No. 747
Docket No. MC-877-25
2-Wab.-I-'42

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

R. M. YOWELL, MACHINIST

vs.

WABASH RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Dismissed from service for my union activity for which I have been denied a hearing by the Wabash Railway Company.

FACTS AND POSITION OF PARTIES: The petitioner claims he was suspended September 26, 1930, and was not given a hearing. He also claims loss of wages amounting to \$13,000.00, and is attempting to have his claim decided by this Division.

The carrier contends that he was given a hearing on September 22, 1930, after an offense on September 21, 1930, and was suspended September 26, 1930; that the proper representatives of the employees disposed of the case and that the case was not "pending and unadjusted" under Section 3, First (i) of the amended Railway Labor Act on date of approval, 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 the controversy was not made a dispute and there was no asserting of the claim until early in 1941.

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 17th day of April, 1942.