

Award No. 776
Docket No. MC-949-38
2-NYC-I-42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**GEORGE W. BIERLY, EMPLOYEE
vs.
THE NEW YORK CENTRAL SYSTEM**

DISPUTE: CLAIM OF EMPLOYEE: George W. Bierly claims by reason of his position on the seniority list of boilermakers at Avis, Pennsylvania, that he should have been employed as a boiler inspector in the enginehouse of the New York Central System from April, 1927, to the present time, and that he was not so retained in derogation of his rights as an employee of the New York Central System.

FACTS AND POSITION OF PARTIES: The petitioner states that he was deprived of certain seniority rights, by reason of which junior men were retained in the service when he was furloughed in April, 1927.

The carrier states that reduction in force was handled in April, 1927, in conformity with the current shop crafts' agreement, and no complaints of any nature were made by employees affected or their committeemen.

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."

The record in this case shows that the instant controversy was not made a dispute and that there was no assertion of the present claim until October, 1941. It follows, therefore, that this case was not pending and unadjusted on June 21, 1934, and that this Division is without jurisdiction.

AWARD

Claim dismissed.

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

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

Dated at Chicago, Illinois, this 15th day of May, 1942.