

Award No. 822

Docket No. 793

2-DL&W-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: (a) That on December 5, 1941, the carrier unjustly discharged Machinist Joseph Constanzo and in violation of the November 1, 1935, agreement;

(b) That he be restored to service with his seniority unimpaired, and

(c) That he be compensated for all time lost until so restored to service.

EMPLOYEES' STATEMENT OF FACTS: Joseph Constanzo was employed on September 19, 1923, as a welder at Keyser Valley car shop. He remained in this department as such until May 15, 1928, when he was transferred to the wheel or machine shop and classified as a machinist. His seniority date on the roster is May 15, 1928. He has worked at various work in said shop, but was employed during most of his time as a welder.

On or about February 28, 1941, his job as a welder was abolished and he exercised his seniority and placed himself on the triple valve job. He worked on this job until on or about November 10, 1941, when this job was abolished. When this job was abolished on the triple valves, he was the junior machinist in the shop (this due to a number of reductions in force), and assigned to duty on a center drive, double carriage axle lathe.

He was employed on this machine a very few days, when the foreman informed him that, if he did not turn out the maximum number of axles he would be discharged. On several occasions he was informed on this same subject, until he was called in the office and told to bring in his committee. The foreman told him and the committee that he was discharging Mr. Constanzo because he could not get out the maximum output on the machine. This was December 5, 1941.

In all cases previous to the assigning of Mr. Constanzo to the axle lathe, when an employe was assigned to new work, he was assisted for some time, but in this case there was not any assistance.

Without help Mr. Constanzo turned out a number of finished axles, and with his work (other than not enough) there was not any complaint. Mr. Constanzo did not spoil any axles.

of his seniority, on the triple repair job and worked on that job until October 1, 1941. On October 1, 1941, Constanzo's job on the triple repair work was abolished and he placed himself on the axle lathe which was the only position open to him. Constanzo never had operated the axle lathe or had previous machine experience. From October 1, 1941, to November 7, 1941, except from October 6-11 inclusive, when Constanzo was absent, Constanzo was assisted and instructed by Albright, an experienced machinist. On November 7, 1941, Constanzo took over the operation of the axle lathe alone, and from that date to November 28, averaged only eleven and three-quarters axles per day. On December 1, 1941, Constanzo and his committeeman, Nicholas Dellacave, were called before the general foreman at Keyser Valley and they were told Constanzo would have to increase his production to the average turned out by other operators of this machine. Dellacave told the general foreman, A. A. Edwards, that Constanzo was not an experienced machinist and that Constanzo's physical condition would not allow him to produce the required work. See affidavit of A. A. Edwards submitted and marked Exhibit 4. Constanzo was given an additional trial of four days during which his production average dropped from eleven and three-quarters to ten and three-quarters axles per day. Constanzo was then disqualified as an operator of the axle lathe.

POSITION OF CARRIER: From the above complete statement of facts it will be noted that Constanzo was not a competent machinist. He was given adequate instruction for a period of approximately one month by Albright, an experienced machinist. Constanzo was given twenty working days to qualify on the axle turning lathe and during that period his average per day was only eleven and three-quarter axles. Constanzo was advised that he was not producing the required amount of work and was given a second opportunity of four days to improve his production. During the second trial Constanzo's production average dropped to ten and three-quarter axles per day which clearly indicates that he was not qualified and could not qualify to operate the axle turning lathe. As a matter of record, Albright immediately took over the operation of the machine in place of Constanzo. Albright operated it from December 6, 1941 to January 20, 1942, and averaged eighteen and one-quarter axles per day. Albright broke in Machinist John Golden on the same axle turning lathe and after Golden was broken in, during the twenty working days thereafter he averaged eighteen and one-half axles per day.

The railroad company maintains that it has violated no rule of the agreement with employees. Constanzo was given a fair trial on the axle turning lathe and could not qualify. This was admitted by the local committeeman. There was no other position at Keyser Valley shop which Constanzo was entitled to under his seniority date of May 15, 1928.

The employees maintain in their claim that Constanzo was discharged. This the company denies. Constanzo was merely disqualified to operate the axle turning lathe. His name still remains on the seniority roster and he can exercise his seniority as to any position with the company which he is qualified to fill.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The carrier stated that Machinist Joseph Constanzo was not and is not discharged from service.

Machinist Constanzo failed to qualify on work his seniority entitled him to.

AWARD

Claim denied.

Machinist Joseph Constanzo will, however, retain his seniority rights as a furloughed employe and will be given an opportunity to demonstrate his ability to perform work available to him within his seniority rights.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of October, 1942.