

Award No. 1017  
Docket No. MC-459-53  
2-C&EI-1-'44

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and  
in addition Referee I. L. Sharfman when award was rendered.

**PARTIES TO DISPUTE:**

**J. G. PATTERSON, EMPLOYEE**

**CHICAGO AND EASTERN ILLINOIS RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEE:** Employee claims that he was laid off from work upon September 4, 1931; that despite the fact that he was ready and willing to work at all times thereafter and in entire disregard of employee's seniority rights, carrier put juniors and new employees to work upon his job; that employee insisted upon his seniority rights, but carrier refused without explanation to employ him; that employee has lost his salary of \$20.79 a week from that day to this, a total loss to date, with legal interest, of eleven thousand four hundred eighty-six dollars and ninety cents (\$11,486.90).

**EMPLOYEE'S STATEMENT OF FACTS:** Employee first began service with carrier upon January 5, 1924, as a coal chute laborer. He worked continuously for carrier at Villa Grove, Illinois, in that capacity, earning 42¢ an hour, \$20.79 a week until June 8, 1931, when he fell from the top of a coal car injuring his back. Employee was asked to return to work upon June 11, 1931. Because of a still disabled condition from that date until June 20, 1931, he was merely required to check in and out, not doing any manual labor. Thereafter, he was given work until September 4, 1931, when he was laid off. Employee then demanded that he be given his seniority rights and that some worker junior to him be laid off, but his request was not complied with. Within ten days thereafter and at least sixty days thereafter employee reported for work and supplied employer with his address, in accordance with company rules, but was not put back on the job, despite the fact that new men and men junior to him in point of service were employed. Conflicting reasons were given by the employer time after time for not using him but at no time has it ever been complained that employee was incompetent, negligent, dishonest or indolent.

**POSITION OF EMPLOYEE:** It is undisputed that the employee, J. G. Patterson, had certain seniority rights by reason of his length of service. The relevant rules of the employer pertaining thereto read as follows:

"c. When force is reduced, such employees affected may have the right, if competent, to displace employees junior on same seniority roster or to displace a junior employee in lower rank in sub department from which he had been promoted, without losing his rank or seniority.

1. Employees who are laid off in reduction of force and who desire to retain their seniority rights, must file their address with their immediate superior within ten days after such reduction, and must

Mr. Patterson was not taken out of service because of having been injured but because of schedule requirement.

In the opinion of the carrier there is absolutely no basis for the claim filed in this case and respectfully requests that it be declined.

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

In Award No. 730, issued March 31, 1942, this Division dismissed the claim involved in this proceeding for want of jurisdiction, on the ground that the dispute had not been handled on the property "in the usual manner," as required by the Railway Labor Act as amended. The award thus rendered was appealed to the United States District Court for the Northern District of Illinois, Eastern Division. In No. 4436, by order issued June 7, 1943, this Court, through Judge Holly, directed the National Railroad Adjustment Board "to hear and determine the alleged claim of the plaintiff against the Chicago and Eastern Illinois Railroad Company heretofore filed and to enter a finding therein." In conformity with this order, the proceeding as originally submitted was reopened. On September 15, 1943, after due notice to the parties, a hearing was held thereon, and upon deadlock of the Division and appointment of a Referee, a further hearing before the Division with the Referee present was held on March 21, 1944.

The evidence of record, as supplemented by the presentation and argument submitted at the hearing of March 21, 1944, supports the following findings and conclusions on the merits of the dispute:

(1) The seniority rights of the claimant, as well as of all other employes whose work at the Villa Grove coal chute is alleged to have been in violation of the claimant's seniority rights from and after September 4, 1931, were first established by the controlling agreement effective May 15, 1925.

(2) Among the provisions of this agreement, in Article 12 (1), it was stipulated that "an employe laid off in reduction in force who is not recalled before December 31st of the next year after such reduction will be dropped from the seniority list and will be considered out of service and if reemployed will enter the service as a new man."

(3) The seniority rights of the claimant, as well as of all other employes whose work at the Villa Grove coal chute is alleged to have been in violation of the claimant's seniority rights from and after September 4, 1931, were modified by an understanding between the parties contained in an interchange of letters dated April 5, 1929 and January 28, 1930.

(4) This understanding, which sought to discontinue coal-chute forces as such at Villa Grove (and at other specified points) as quickly as possible and to establish a consolidated roster of coal-chute and engine-house forces, provided that, as of April 16, 1929, coal-chute laborers would have seniority in the engine house and engine-house laborers would have seniority at the coal chute, in addition to retaining, respectively, their original seniority at the coal chute and in the engine house.

(5) This understanding did not modify in any way the provision of Article 12 (1) of the agreement effective May 15, 1925 whereby employes laid off in reduction of force without being recalled before the end of the following year would lose their seniority rights.

(6) The agreement effective May 15, 1925 was made by and between the carrier and the Brotherhood of Maintenance of Way Employes and Railway Shop Laborers.

(7) The understanding set forth in the letters dated April 5, 1929 and January 28, 1930 was likewise reached by and between the carrier and the above-named Brotherhood.

(8) At no time since the alleged violation of the claimant's seniority rights involved in this proceeding has there been any dispute between the carrier and the Brotherhood as to the nature and scope of the seniority rights of laborers at Villa Grove established by the agreement effective May 15, 1925 and modified by the understanding incorporated in the letters of April 5, 1929 and January 28, 1930.

(9) Under the interpretation of this agreement and understanding concurred in by the carrier and the Brotherhood, the original seniority of coal-chute laborers as such and of engine-house laborers as such applied only to the filling of regular or full-time positions at the coal chute or in the engine house.

(10) Under this interpretation of the agreement and understanding, engine-house laborers were permitted to assist intermittently in the performance of work at the coal chute, without regard to their seniority as coal-chute laborers.

(11) The carrier consistently applied the agreement and understanding on this basis.

(12) The Brotherhood advised the claimant that the agreement and understanding were not violated by the action of the carrier.

(13) During the depression years many laborers at Villa Grove lost their seniority as a result of the application of the provision of Article 12 (1) previously set forth.

(14) The claimant was properly laid off on September 4, 1931, in reduction of force at Villa Grove.

(15) No new employees were hired at that point between September 4, 1931 and December 31, 1932.

(16) No engine-house laborer was assigned to regular or full-time work at the coal chute between September 4, 1931 and December 31, 1932.

(17) Such intermittent work as was performed by engine-house laborers at the coal chute between September 4, 1931 and December 31, 1932 did not constitute a violation of the controlling agreement and understanding.

(18) The claimant, properly laid off on September 4, 1931, was not recalled to service prior to December 31, 1932.

(19) Under no provision of the controlling agreement and understanding was the claimant entitled to be recalled to service prior to December 31, 1932.

(20) Under Article 12 (1) of the agreement effective May 15, 1925, the claimant was properly "dropped from the seniority list" and "considered out of service" after December 31, 1932.

In these circumstances the claim submitted to this Division is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1944.