

Award No. 1213

Docket No. 1148

2-L&N-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (CARMEN)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman Helper H. R. Hutchinson was unjustly deprived of his service rights during October 15, 1945 and April 26, 1946, inclusive, and accordingly the carrier be ordered to reimburse him for all time lost in the amount of 118 days of \$738.04.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper H. R. Hutchinson, hereinafter referred to as the claimant, entered the service of the carrier as a laborer at DeCoursey, Kentucky on July 30, 1941, and remained therein as such until promoted and assigned to the position of a carman helper on October 3, 1942, which assignment is substantiated by copy of Bulletin No. 217, identified as Exhibit A.

The claimant remained in the service of the carrier as a carman helper through December 18, 1942, and thereupon he entered into the service of the Merchant Marines of the U. S. A., having been examined on December 22, 1942, but was temporarily rejected for an eye infection. Nevertheless, the claimant remained on the waiting list for recovery of the eye defect when he was reexamined on February 3, 1943 for service in the Merchant Marines, at which time he was accepted, assigned to a training base, and remained in the service thereof until honorably discharged in September, 1945. Shortly thereafter, or on October 15, 1945, the claimant reported to the car foreman for resuming his position as a carman helper, but that the car foreman refused to permit this claimant to resume his service rights as a carman helper. All of this statement is substantially affirmed by copy of affidavit, identified as Exhibit B.

On November 24, 1945 the carrier re-employed this claimant as a carman helper, without restoring to him his prior accumulated rights as a carman helper. This resulted in the claimant being displaced by carmen helpers returning from the Armed Forces, effective January 14, 1946, and these returning carmen helpers in reality were junior to him. However, the carrier finally called this claimant back in the service on April 27, 1946 and restored to him his original accumulated seniority rights as a carman helper.

This dispute has been handled in accordance with the current agreement effective September 1, 1943, up to and with the highest designated carrier officer to whom such matters are subject to appeal, with the result that this officer has declined to adjust this money claim in favor of the claimant.

CONCLUSION

Carrier insists that this claim has no support in law, in reason, or in equity, and that it should, therefore, be denied.

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.

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 Division considered the acts in question and the working agreement and decided it had jurisdiction to decide the grievance of Carman Helper Hutchinson.

The evidence in this case does not sustain claim that Hutchinson was unjustly deprived of his seniority rights or that he should be reimbursed for time lost October 15 to November 23, 1945, inclusive—thirty-three (33) days' work—and January 14 to March 14, 1946, inclusive—forty (40) days' work.

The evidence does warrant a claim for forty-five (45) days' pay account time lost March 5 to April 26, 1946, as on March 4, 1946, by letter, General Chairman Powell, Brotherhood Railway Carmen of America, agreed with suggestion of Mr. L. L. Morton, Director of Personnel, Louisville and Nashville Railroad Company, in his letter of February 20, 1946, that "Hutchinson's name be placed back on the carmen helpers' seniority roster with his original helper's seniority dating as such."

This settled the dispute as to Hutchinson's status. Under the circumstances cited in this case, Hutchinson, rather than the representatives of the company or the employes, was responsible for the uncertainties that existed up to March 5, 1946, and which were finally disposed of by an understanding based in part on assumptions as outlined in Mr. Morton's letter of February 28, 1946.

AWARD

Claim sustained for the period March 5 to April 26, 1946, inclusive—forty-five (45) days. Claim for other periods of time denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1947.