

Award No. 1275
Docket No. MC-1210-57
2-AT&SF-I-'48

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

**UNITED RAILROAD WORKERS OF AMERICA, C. I. O.,
IN BEHALF OF ALVIN R. WILSON, SR. (Machinist)**

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: "Claim is hereby made in behalf of Alvin R. Wilson, Sr., for his reinstatement as machinist in the employ of The Atchison, Topeka and Santa Fe Railway Company at the Santa Fe Diesel Building, at 21st Street and Archer Avenue, Chicago, Illinois, and for the payment of all wages wrongfully withheld, on the grounds of wrongful dismissal June 16, 1947, and subsequent refusal to consider an appeal in his behalf."

The issue before the Board is one of jurisdiction to docket and hear the case. The Board under date of April 6, 1948, advised the interested parties in the following manner:

"Referring to your respective submissions in the case above designated:

You will please receive this letter as due notice that hearing on this case will be held at 10 A. M. Thursday, April 22, 1948, at the headquarters of the Second Division of the National Railroad Adjustment Board, 2130 Consumers Building, 220 South State Street, Chicago, Illinois, for the purpose of determining only the question of jurisdiction of the Division in this case.

A copy of the employees' submission in this case is being forwarded herewith to the carrier, and a copy of the carrier's submission is being forwarded herewith to the employees, in accordance with the Resolution adopted by the Second Division on March 27, 1936, a copy of which is hereto attached.

A copy of the submissions of the parties in this case is being furnished the Railway Employees' Department, A. F. of L., parties to the agreement involved in this dispute."

A hearing was afforded the parties on April 22, 1948, at which hearing the petitioner, the United Railroad Workers of America, C. I. O., the carrier, The Atchison, Topeka and Santa Fe Railway Company, also System Federation No. 97, Railway Employees' Department, A. F. of L., all appeared and argued their respective positions.

OPINION OF THE DIVISION: The hearing before this Board was solely on the question of jurisdiction. Primarily the Board must determine whether there has been compliance with the procedure laid down in the Railway Labor Act for the processing of complaints and grievances.

The Railway Labor Act is explicit in regard to procedure. The Act requires that disputes "be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes." After exhausting the procedures on the property, either party or both may appeal to the National Railroad Adjustment Board. The procedures on the property are outlined in the agreement between the carrier and the union authorized to represent the employees as provided for in the Act.

The agreement rule applicable is as follows:

"GRIEVANCES AND DISCIPLINE

Rule 33

(a) Should an employe whose wages and working conditions are governed by this Agreement believe that he has been unjustly dealt with, or that any of the provisions of this Agreement have been violated, he or the duly authorized representative of his craft shall take the case to the Foreman within ten (10) days following the occurrence complained of, and if not satisfactorily adjusted, it may then be appealed within fifteen (15) days to succeeding higher officers, and if unable to make satisfactory adjustment, he or the local committee may appeal the case to the Shop Superintendent, Master Mechanic or corresponding officer, each such appeal to be made within fifteen (15) days after decision is rendered.

(b) If the result is unsatisfactory, the employe or the duly authorized General Chairman shall have the right to appeal in writing to succeeding higher officers of the Company designated to consider appeals, providing appeal is made within sixty (60) days after date of each decision. Such appeals may be made by the employe himself or by the General Chairman representing his craft. Copies of letters of appeal will be given officers appealed from. Should the employe himself or the General Chairman be dissatisfied with the decision rendered by the highest designated officer and further appeal is desired, the case may then be handled in accordance with the Railway Labor Act, providing such appeal is made within ninety (90) days after date of decision.

(c) Time claims will be restricted to a period commencing not earlier than sixty (60) days prior to the date they are first presented.

(d) No employe will be disciplined without first being given an investigation which will be promptly held, unless such employe shall accept dismissal or other discipline in writing and waive formal investigation. Suspension in proper cases pending a hearing, which shall be promptly held, will not constitute a violation of this rule. An employe involved in a formal investigation may be represented thereat, if he so desires, by the Local Chairman and one member of the Shop Committee.

(e) Prior to the investigation, the employe alleged to be at fault shall be apprised of the charge sufficiently in advance of the time set for investigation to allow reasonable opportunity to secure the presence of necessary witnesses.

(f) A copy of the transcript of the evidence taken at formal investigation will be furnished the employe, or his representative, provided request therefor is made at the time the investigation is held.

(g) If the final decision shall be that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with seniority rights unimpaired, and compensated for the net wage loss, if any, resulting from said suspension or dismissal.

(h) When employes are required to report outside of their regular bulletined hours to act as witness for the Company in investigations, they shall receive straight time rates from time reporting at designated location until released.

(i) All conferences between local officials and Local Committees to be held during regular working hours without loss of time to Committeemen.

(j) Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shutdown by the employer nor a suspension of work by the employes."

The claimant, Alvin R. Wilson, Sr., failed to pursue the prescribed method in handling his grievance as outlined in Rule 33 of the agreement between the carrier and the employes as is shown by the written record before this Division.

As was said in this Division's Award No. 514:

"In order that this Board might assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner."

Because the petitioner failed to pursue the required method in presenting his grievance, which in this case is that provided in the agreement between the carrier and the employes, this Board is without jurisdiction to pass upon petitioner's claim.

AWARD

This Board having no jurisdiction over the petition in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1948.