Award No. 1587
Docket No. 1460
2-CGW-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 73, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

CHICAGO GREAT WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That Machinists D. E. Kendall and H. McInnes were laid off in a force reduction on June 6, 1949, in violation of the rules of the current agreement and the seniority rosters maintained in conformity therewith at Oelwein, Iowa.

2. That, accordingly, the carrier be ordered to:

a) Compensate Machinist D. E. Kendall for all time lost during the period of June 6th through August 31st, 1949.

b) Compensate Machinist H. McInnes for all time lost during the period of June 6th, 1949 through April 13th, 1951.

EMPLOYES' STATEMENT OF FACTS: The carrier, through the substitution of diesel engines for steam engines at Oelwein, Iowa, roundhouse, eventually reduced the roundhouse running repair forces until the roundhouse operations were transferred to a near-by established diesel ramp and what remained of the roundhouse machinist force was then assigned to the diesel ramp with the result that, finally, the force of machinists employed at the ramp on June 5, 1949, consisted of:

"Name	Seniority Date:
1. H. A. Anderson	November 1, 1917
2. D. E. Kendall	August 16, 1918
5. H. McInnes	February 21, 1922
6. A. Miller	September 17, 1922
7. A. Fridley	September 18, 1922"

The carrier, the next day, or June 6, 1949, made the election to lay off Machinists D. E. Kendall and H. McInnes, hereinafter referred to as the claimants, in lieu of the above two junior machinists and who have so ranked as junior to the claimants on the seniority rosters jointly maintained throughout the years of 1932 to and including 1951.

"There has been no evidence presented in this dispute which would influence any change in my position in the matter and if you don't feel you can accept my decision, arrangements should be made for a committee of four to dispose of the dispute in the manner outlined in the final paragraph of my letter September 28, 1949."

The general chairman rejected decision of the personnel officer and referred dispute to the Second Division, National Railway Adjustment Board in lieu of disposing of controversy in the manner provided by paragraph FOURTH of the agreement dated October 3, 1922 (Exhibit A).

POSITION OF CARRIER: It is the carrier's position that this dispute is not properly before and must necessarily be dismissed by the Second Division, National Railroad Adjustment Board, for obvious lack of jurisdiction, under terms of paragraph FOURTH of the agreement dated October 3, 1922 (Exhibit A) reading:

"FOURTH: That any dispute or controversy arising out of the question of seniority or positions for the men returning to work, which cannot be adjusted between the men and the Supervising Officers, may be referred to a committee of four, to be comprised of two representatives of the Railroad Company and two representatives of the strikers, and that their decision is to be final, without appeal."

Terms of the foregoing are mandatory that this dispute "be referred to a committee of four, to be comprised of two representatives of the Railroad Company and two representatives of the strikers, and that their decision is to be final, without appepal."

The Second Division is respectfully requested to remand this dispute back to the parties for disposition in accordance with terms of governing agreement.

Exhibits A to H, inclusive, are submitted herewith and made a part hereof, as if fully set forth herein.

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.

Claimants Kendall and McInness established machinist seniority in the carrier's Oelwein Roundhouse district on August 16, 1918, and on February 21, 1922, respectively. Both men participated in the Shopmen's strike of 1922 against the carrier. During the strike certain replacements were employed, including A. Miller on September 17, 1922, and M. Fridley on September 18, 1922.

At the conclusion of the strike the striking employes and the carrier negotiated an agreement (October 3, 1922) which, among several things, provided that the carrier would re-employ the strikers having acceptable service records, with seniority as held before the strike—except that such seniority could not be used to displace employes who had not participated in the strike or who had been employed during the strike.

After the end of the strike the seniority lists posted by the carrier under the Parties' agreement had Miller's and/or Fridley's names sometimes above those of Kendall and McInness, sometimes below (in regular chronological order of employment). It appears that when Miller's and Fridley's names were higher than the claimants', the former men were being used as working foremen.

Dieselization of the carrier's property after World War II resulted in a reduction of machinist operations at Oelwein to five positions by June 5, 1949. On June 6, 1949, the carrier further reduced this force by furloughing Kendall and McInness.

Whether we consider this case from the standpoint of a major contention of the carrier (namely that, pursuant to another provision of the October 3, 1922 agreement, the case should be privately arbitrated by the Parties and is therefore not properly before this Board) or whether we consider the case here on its merits, the crucial issue before us is this: Is Paragraph Fourth of the October 3, 1922 agreement still controlling, or has it been superseded by the currently effective Schedule Agreement (which went into effect February I, 1924), particularly Rule 27 and the second paragraph of Rule 31?

The determination of this issue rests in part on an interpretation of fact and in part on an interpretation of the above-mentioned agreements. The question of fact is this. When the carrier posted Miller's and Fridley's names below those of the claimants', did this mean that the carrier had tacitly agreed to disregard or rescind the agreement of October 3, 1922, and to abide instead by Rules 27 and 31 of the Schedule Agreement? The question of interpretation of the agreements is this: Did the Parties intend that the October 3, 1922 agreement should apply only to the period during which the strikers returned to work and that this agreement should yield to the terms of the Schedule Agreement?

The answers to both questions, we think, must be in the negative. The Organization has failed to establish in the record any compelling evidence to the contrary. On the other hand, the carrier has produced a letter to it from a representative of the employes, dated November 25, 1929, which establishes that in that year, more than five years after the Schedule Agreement went into effect, the employes regarded the earlier agreement as still valid in respect to protecting the non-strikers of 1922 from displacement by the strikers of 1922. Accordingly, in our opinion the fact that Miller's and Fridley's names usually appeared below those of the claimants is neither persuasive nor compelling in shaping our answer to the first question posed above.

In respect to the second question, we can find no controlling evidence in the record that Rules 27 and 31 were intended by the Parties to abrogate and supersede the relevant provisions of the October 3, 1922 agreement.

In respect to the carrier's challenge of this Board's authority to assume jurisdiction over the instant controversy, we think we may properly assume such jurisdiction. Paragraph Fourth of the October 3, 1922 agreement is permissive rather than mandatory in respect to settling disputes under that agreement; the word "may" rather than "shall" is used. Moreover, there can be no question that under the provisions of the Railway Labor Act this Board's proper function is to interpret agreements; and the task of such interpretation is clearly presented to us in the instant case.

In the light of all the above, our decision in this case is to deny the claim on its merits. We do not think that the carrier wrongfully furloughed Kendall and McInness while retaining Miller and Fridley.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of November, 1952.