Award No. 1680
Docket No. MC-1429-72
2-IC-I-'53

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

C. C. THOMPSON, MACHINIST (Petitioner)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF PETITIONER: There presently exists a dispute between petitioner and Illinois Central Railroad relative to petitioner's seniority as a machinist in the shop operated by said Railroad at McComb, Mississippi. Petitioner is entitled to seniority as a machinist at McComb, dating from March 5, 1926, which seniority the said Railroad refuses to recognize.

PETITIONER'S STATEMENT OF FACTS: Petitioner was first employed by Illinois Central Railroad as a machinist at McComb, Mississippi, on March 5, 1926, where he worked in such capacity until November, 1927, when petitioner was furloughed at McComb as a machinist. In this manner petitioner acquired seniority as a machinist at McComb from March 5, 1926.

Thereafter, petitioner was employed by Illinois Central Railroad as a machinist at Peducah, Kentucky, from November, 1927, to July 16, 1929, when the said railroad assigned petitioner the duties of day roundhouse foreman at Jackson, Mississippi. Petitioner worked for the said railroad at Jackson, Mississippi, in the said capacity and as general foreman from July 16, 1939, to October 7, 1941, when he was transferred by the said railroad back to McComb, Mississippi, in the capacity of machine and erecting foreman. Petitioner purchased a home at McComb on April 24, 1948, on the strength of his seniority at that place.

Shortly after petitioner was transferred back to McComb as aforesaid, he first discovered that his name had been removed from the seniority roster at McComb. Petitioner immediately took the matter of his seniority up with P. O. Christy, the chief mechanical officer of the said railroad, by both verbal and written communications, protesting the removal of his name from the seniority roster. At that time the said P. O. Christy advised petitioner that he need not concern himself in regard to his seniority as a machinist inasmuch as petitioner was then performing supervisory work for the railroad, and assured petitioner that his seniority would be recognized at McComb as of March 5, 1926, when and if petitioner became needful of his seniority right.

Petitioner shows that his name was removed from the said seniority roster without his knowledge or consent, contrary to petitioner's rights, and wholly without justification.

Petitioner continued to work for the said railroad at McComb in the capacity of machine and erecting foreman and also as day roundhouse fore-

more than sufficient for a denial on the basis of laches, which doctrine has been applied by the Board in denying many claims.

It is the position of the carrier that for reasons stated this claim is not properly before the Board and should be dismissed, and without prejudice to that position, the claim should be denied for lack of merit and for inordinate delay in handling.

Carrier is unable to affirm that the data in support of Carrier's position have been presented to the claimant or his representative in accordance with the Board's Rules of Procedure, due to the fact that this claim has not been properly handled on the property in accordance with the Railway Labor Act.

FINDINGS: The Second Division of that 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.

The parties to said dispute were given due notice of hearing thereon.

A hearing was afforded the parties on May 8, 1953, at which hearing the petitioner, C. C. Thompson; the carrier, Illinois Central Railroad Company; and the Railway Employes' Department, all appeared and argued their respective positions.

Before considering the record on the merits, this Division of the National Railroad Adjustment Board must first determine if it has jurisdiction over the petition presented. Primarily the Division 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 (45 U.S.C.A. 153 First (i)) requires that dispute " * * * **shall** be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes, but failing to reach an adjustment in this manner * * * " either party or both may then appeal to the National Railroad Adjustment Board.

The Second Division of the National Railroad Adjustment Board, having considered the evidence, both oral and documentary, the arguments of counsel and being fully advised in the premises, finds:

1. That C. C. Thompson, petitioner herein, is a member of the class or craft represented on the Illinois Central Railroad Company by System Federation No. 99.

2. That the procedures for handling disputes on the property between members of the aforesaid class or craft and the carrier are provided for in an agreement between the carrier and the union authorized to represent the employes as provided for in the Railway Labor Act.

3. That the following rules are incorporated in an agreement negotiated in conference between the Illinois Central Railroad Company and System Federation No. 99, representing the craft or class authorized to represent petitioner herein, effective December 16 1943.

"Rule 37. Should any employe subject to this agreement believe that he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the Foreman, General Foreman, Master Mechanic or Shop Superintendent, each in their respective order, by the duly authorized local committee or their representative, within fifteen (15) days. If stenographic report of investigation is taken the committee shall be

furnished a copy. If the result still be unsatisfactory, the duly authorized general committee, or their representative, shall have the right of appeal, preferably in writing, to the higher officials designated to handle such matters in their respective order, and conference will be granted as promptly as possible.

All conferences between local officials and local committees to be held during regular working hours without loss of time to committeemen.

INTERPRETATION

Any claim or grievance must be handled initially with the Foreman within fifteen (15) days of its occurrence. If denied by the Foreman, it must be appealed to the General Foreman within fifteen (15) days from date of denial by Foreman. If denied by the General Foreman, it must be appealed to the Master Mechanic or Shop Superintendent within fifteen (15) days from date of denial by the General Foreman.

Rule 38. Should the highest designated railroad official, or his duly authorized representative, and the aggrieved employe's committee or their representative, as provided in the first paragraph of Rule 37 fail to agree, the case shall then be handled in accordance with the Railway Labor Act.

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

4. That the procedures outlined in said rules for handling disputes on the property are the "usual manner" of handling grievances between members of the class or craft represented by System Federation No. 99 and the Illinois Central Railroad Company.

5. That petitioner failed to pursue the method or methods prescribed in said Rules 37 and 38 in handling his grievance with the carrier.

6. Petitioner's claim was not appealed on the property by the local or general committees or their representatives in accordance with Rule 37 nor did petitioner individually carry the dispute or claim to the chief operating officer designated to handle such disputes.

7. That petitioner failed to pursue the method prescribed by the Railway Labor Act for handling his grievance with carrier.

8. That this Division has previously held in Awards Nos. 514 and 1275:

> "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.

9. That petitioner's failure to pursue the required method of presenting his grievance is jurisdictional and that this Division of the National Railroad Adjustment Board is without power to pass upon petitioner's claim.

IT IS THEREFORE ORDERED that an Award be entered in this proceeding dismissing the petition of C. C. Thompson.

AWARD

The Second Division of the National Railroad Adjustment Board, having no jurisdiction over the petition in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Date at Chicago, Illinois, this 24th day of June, 1953.