

Award No. 1720
Docket No. MC-1450-78
2-ACL-I-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

D. H. ISGETT (Individual)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: Dispute arising out of the depriving by this Company of Petitioner D. H. Isgett's seniority in or about January of 1950, and being the same dispute stated in a legal action entitled D. H. Isgett vs. Atlantic Coast Line Railroad Company, brought in the Civil Court of Florence; the question here being submitted is whether the said D. H. Isgett was wrongfully deprived of his seniority by the Atlantic Coast Line Railroad Company.

EMPLOYEES' STATEMENT OF FACTS: This dispute commenced when D. H. Isgett, hereinafter referred to as the petitioner, was relieved of his seniority by the respondent, the Atlantic Coast Line Railroad Company, on or about January of 1950.

POSITION OF EMPLOYEE: The petitioner commenced working with the respondent on or about 1942, and worked for respondent until March 18, 1949, when petitioner was furloughed by reason of a reduction of forces by respondent. In January of 1950, employees of respondent who had less seniority than petitioner were called back to work for respondent. Petitioner then made inquiry and discovered that respondent contended that petitioner had lost his seniority by virtue of petitioner's failure to comply with Rule 16 of the working agreement between petitioner and respondent. Petitioner then brought an action in the State Courts of the State of South Carolina for damages in restoration of seniority because of the wrongful discharge of petitioner by respondent, the action being commenced on or about the 27 of January, 1951. Petitioner returned to the employment of respondent on the 11 of October, 1950. The State Court gave a judgment to petitioner in the amount of ONE THOUSAND SIX HUNDRED SEVENTEEN AND 83/100 (\$1,617.83) DOLLARS to cover his wages lost as the result of his loss of seniority. Respondent appealed from this judgment to the State Supreme Court and the Supreme Court reversed the judgment of the lower court, holding that the State Courts had no jurisdiction to hear this dispute as it involved a dispute of the restoration of seniority of petitioner.

The transcript of record in the case of D. H. Isgett v. Atlantic Coast Line Railroad Company, in the Civil Court of Florence, County of Florence, State of South Carolina, is submitted with this statement of facts. It contains all the testimony in the trial of the aforesaid case and gives a complete statement of the facts involved. There is also submitted the brief of the petitioner and respondent in the appeal of this case to the Supreme Court of the State of

Data in support of the carrier's position has not been presented to Mr. Isgett's representative (other than correspondence quoted herein) due to the fact that carrier has never offered an opportunity to do so since neither Mr. Isgett nor his representative has ever handled with Mr. Isgett's immediate superior, much less through the regular channels of appeal. Carrier would also like to call attention to the fact that no data in support of claimant's position has been received by carrier (other than correspondence quoted 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.

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

A hearing was afforded the parties on November 5, 1953. The claimant waived appearance, but the carrier was represented. The claimant Mr. Isgett, presented his grievance to this Division without first progressing said grievance up to and including the highest operating officer of the carrier designated to handle such disputes, as required by Rules 19 and 20 of the current agreement, which provide:

Rule 19

"(a) An employe who believes he has been unjustly dealt with shall, within fifteen (15) days, either in person or with the local chairman endeavor to make an adjustment with his immediate foreman; this does not prevent the local committeeman from presenting a claim of violation of agreement.

"(b) Any further handling in person, or through a duly authorized representative of System Federation No. 42, shall be with the General Foreman, or Master Mechanic, within forty-five days, after the decision rendered by the immediate foreman concerned.

"(c) The right of appeal shall be granted, the appeal to be made in person or through a duly authorized representative of System Federation No. 42, to the next higher officials in the order of succession of their authority. This appeal must be made in writing.

* * * *

Rule 20

"Should the highest designated railway officer, or his duly authorized representative, and the duly authorized representative of System Federation No. 42, fail to agree, the case shall then be handled in accordance with the Railway Labor Act.

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

and Section 3 (i) of the Railway Labor Act.

The rules of procedure of the National Railroad Adjustment Board require that "No petition shall be considered by any Division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

This Division has previously held in Awards Nos. 514, 1275, 1680, and 1718:

"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."

Due to the claimant's failure to pursue the required method of presenting his grievance, this Division of the National Railroad Adjustment Board is without power to pass upon his claim.

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

Dated at Chicago, Illinois, this 20th day of November, 1953.