

Award No. 1733
Docket No. MC-1458-81
2-CRI&P-I-'53

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

ANDREW LESTER GUINN, CARMAN (Individual)
CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYE: Question: The seniority rights of Andrew Lester Guinn, as carman, retroactive to, on or about, February 26, 1938.

The rights of Andrew Lester Guinn, to back pay, starting on or about the 1st day Charles E. Cazes was paid and employed as carman.

POSITION OF EMPLOYES: 1. On or about February 23, 1953, a petition for recognition of seniority rights and for back pay, was sent as follows, to:

Original sent to: Hon. G. E. Mallery, Manager of Personnel,
Rock Island Lines,

7047 Stewart Avenue, Chicago, Illinois.

Exhibit #1, submitted herewith, showing that on February 27, 1953, the aforesaid petition was received by G. E. Mallery, etc., return receipt #7375

Carbon copy sent to: Hon. F. J. Schleih, General Superintendent of motive power,

7047 Stewart Avenue, Chicago, Illinois.

Exhibit #2, submitted herewith, showing that on February 27, 1953, the aforesaid petition was received by F. J. Schleih, etc., return receipt #7376

Carbon copy sent to: Hon. L. B. Close, Master Mechanic, RI Lines,

% Biddle Shops, Little Rock, Arkansas

Exhibit #3, submitted herewith, showing that on February 25, 1953, the aforesaid petition was received by L. B. Close, etc., return receipt #7374

Carbon copy sent to: Hon. W. E. Breitz, General Chairman, Room 220,

3519 Throops Avenue, Kansas City 3, Missouri.

It is hereby affirmed that all of the foregoing is, in substance, known to petitioner and is hereby made a part of the question in dispute.

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 13, 1953. The claimant presented his alleged grievance to this Division without handling it in accordance with Rule 32 of the governing agreement, which rule provides in part:

"Should any employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be submitted in writing to the foreman or general foreman, master mechanic or shop superintendent, each in their respective order, by the duly authorized local committee or their representatives, within thirty (30) 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 representatives, shall have the right of appeal, in writing, with the higher officials designated to handle such matters in their respective order and conference will be granted within ten (10) days of application.

* * *

Should the highest designated railroad official or his duly authorized representative, and the duly authorized representative of the employes, as provided in this rule, fail to agree, the case shall then be handled in accordance with the Railway Labor Act.

* * *

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, 1718, 1720, and 1721:

"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 17th day of December, 1953.