

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

RICHARD COPELAND—Machinist Helper

ILLINOIS TERMINAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: Employee claims he was unjustly discharged by carrier in November 1947. Was employed as Machinist's Helper. Asks an award to be reinstated as of November 1947 and also for back pay at the current rates from that date to this date, and also all benefits that a Machinist's Helper would be entitled to from November 1947 to date such as seniority, pensions, etc.

EMPLOYEES' STATEMENT OF FACTS: Employee was employed as a machinist's helper by the carrier, at its shop at Federal, Madison County, Illinois, in January 1943. Worked continuously in that capacity until November 1947.

At that time he was ordered to transfer in same capacity to McKinley Junction, at Madison, Illinois, by H. C. Snyder, general shop foreman at Federal, Illinois.

The reason given him that an employee working at McKinley Junction had been injured and that he was to replace injured employee until his return to work. Had a broken arm.

Employee had been working straight day shift and resided in Alton, Illinois, which was approximately fifteen (15) miles from McKinley Junction, which would mean daily communications between the two points. He would also have to work the 11:00 P. M., to 7:00 A. M., shift daily.

Employee told H. C. Snyder, general shop foreman, he would work a few nights until they could replace him with a younger machinist's helper, in point of service, giving the reasons set forth in the preceding paragraph for not wanting the job at McKinley Junction. Master mechanic replied he was to work at McKinley Junction daily on the 11:00 P. M., to 7:00 A. M., shift until injured employee returned or be "pulled out of service."

There were two other machinist helpers, having less service, than this employee, working at the same shop, namely, Leonard Wilson, who is still employed by carrier, and Ed Rohlfing, no longer employed by carrier.

Because of his seniority, under the customs and practice of the shop, he refused to make the transfer and on the following morning he was "pulled out of service" or discharged.

November 27, 1947, and requested that he designate an employe to fill the vacancy. Richard Copeland, as the junior machinist helper working on the day shift at Federal shops, was the employe so selected. Richard Copeland refused such assignment on that same date and with the knowledge and concurrence of his local chairman, the carrier immediately relieved him of his duties. On December 3, 1947, he was notified to attend a formal investigation of the incident and as a result of the finding in such investigation, held on December 10, 1947, and at which he was present, Richard Copeland was discharged from the service of the carrier effective November 27, 1947. He was so advised on December 15, 1947.

POSITION OF CARRIER: On and for many years prior to November 27, 1947, the carrier had a working arrangement with the machinists' organization concerning the procedure for filling temporary vacancies. This had been agreed to at the request and insistence of the machinists' organization, and although the agreement was never reduced to writing, it was, nevertheless, a practice of long standing and binding upon both the carrier and the organization. With the advent of any such vacancy, the carrier, through official channels, would request from the local chairman of the machinists' organization the name of the employe who should fill it. The local chairman, if unable to secure a volunteer, would in all cases then designate the junior employe, from the standpoint of seniority, holding an assignment on the day shift at Federal shops. In the instant case this man was Richard Copeland. There were, at the time of his discharge, only five men junior to Copeland listed on the then current District 4 seniority roster as machinist helpers; Wilson, Rohlfing, Whorl, Robertson, and Aldridge. By reference to the attached series of job advertisement and assignment bulletins immediately following upon Copeland's discharge, it can be established that prior to such discharge, Wilson was working at Federal on the 4:00 P. M. to 12:00 P. M. shift; that Whorl was working at McKinley Junction; and that Rohlfing was working at Federal on the 12:00 A. M. to 8:00 A. M. shift. Robertson was the man whose injury created the temporary vacancy, and Aldridge was not working.

It is the position of the carrier that Richard Copeland, as the junior employe assigned to the day shift at Federal, was properly selected by the machinists' organization to fill the temporary vacancy according to the established practice current on the carrier's property; that he improperly refused such assignment; and that upon being afforded a formal hearing with respect to such refusal, he was properly discharged from the service of the carrier as a result thereof.

In conclusion, the carrier respectfully states that the claim herein is wholly unfounded, without merit, and should be denied.

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.

Section 3 (i) of the Railway Labor Act reads as follows:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, 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, the disputes may be referred by petition of

the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

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 held in a number of previous awards—"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 the petitioner. * * *."

The record reveals that the petitioner has not complied with the statute and the procedural requirement of the National Railroad Adjustment Board.

AWARD

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

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of December, 1955.