

Award No. 4044
Docket No. 3867-I
2-MP-I-'62

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:

CURLEY McGRARY, THOMAS PAGE AND MOSE McDOUGLE

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: These petitioners are furloughed Machinist Helpers under the jurisdiction of the Master Mechanic at St. Louis, Missouri, who claim that they were furloughed from their jobs in the latter part of May, 1957, in violation of their seniority rights as prescribed by Rules numbers 21(a)—Reduction of Forces and 25(e)—Seniority Date of the Agreement dated September 1, 1949, and as amended, between the Missouri Pacific Railroad Company and System Federation No. 2 Railway Employees Department and SC 91-1, dated March 11, 1943, cancelling SC Decision No. 91, dated May 13, 1941, effective March 15, 1943.

These petitioners are seeking to have their seniority adjusted according to SC Decision No. 91-1 effective March 15, 1943, to be returned to their jobs as Machinist Helpers in line with said Decision and to be paid as damages, the wages, salaries and other monetary advantages lost by them because of their furlough in disregard of said Decision.

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 employees 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.

Parties to said dispute were given due notice of hearing thereon.

The three instant claimants are among the seven claimants whose case was presented to this Division in Docket 3271. That case, which raised issues on the merits identical with those here, was dismissed by the Division without a referee's assistance in Award 3323 on the grounds of procedural defect. The language of said Award was simply "Claim dismissed;" that is, the words "without prejudice" were not added.

Without necessarily meaning to imply that the absence of "without prejudice" has special significance here, the Division now finds that the instant claimants are not properly before it for a consideration of the merits of their case. The reason for this finding is very simple and compelling. Under Section 3, First (m) of the amended Railway Labor Act an award of this Division that does not involve a money award (as in Award 3323) is final and binding upon both parties. Under the Act, then, this Division, having previously refused to consider the same claimants' case on the merits, is now without authority to grant such consideration. The instant claim must also be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1962.

DISSENT OF LABOR MEMBERS TO AWARD No. 4044.

The majority's conclusion that "Under The Act, this Division, having previously refused to consider the same claimants' case on the merits, is now without authority to grant such consideration. This instant claim must also be dismissed," and its award thereon is in error. The right of employe to have his claim heard and determined on the merits is provided in the Railway Labor Act—see Awards No. 730 and No. 1017.

Therefore we dissent.

C. E. Bagwell

T. E. Losey

E. J. McDermott

Robert E. Stenzinger

James B. Zink