

Award No. 4419

Docket No. 4270

2-C&O-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Firemen and Oilers)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement, Coal Pier Laborer Franklin L. Savage was unjustly dismissed from the service of the Carrier, effective January 9, 1961.

2. That accordingly the Carrier be ordered to reinstate this employe with all seniority and employe rights unimpaired and pay for all time lost retroactive to January 9, 1961.

EMPLOYEES' STATEMENT OF FACTS: Coal Pier Laborer Franklin L. Savage, hereinafter referred to as the claimant, was employed by the carrier on April 17, 1957, at Newport News, Virginia, and since that time has performed his duties in a satisfactory manner.

On January 3, 1961, the claimant received a letter from J. W. Martin, assistant superintendent—coal piers, requesting that he attend investigation on January 5, 1961, on the charge of allowing his wages to be attached by the City of Newport News in the amount of \$55.54.

Investigation was held on January 5, 1961, as scheduled.

On January 11, 1961, Superintendent C. S. Savage, Newport News, Virginia, advised the claimant that he was dismissed from the service of the carrier for allowing his wages to be attached by the city of Newport News in the amount of \$55.54.

This dispute has been handled with the carrier up to and including the highest designated officer of the carrier, with the result that such officers have declined to adjust the dispute.

The agreement effective April 16, 1950, is controlling.

There is perhaps no precept more clearly established by the Adjustment Board than the above principle in discipline cases enunciated time and again by all the divisions. The carrier will not burden the record by repeated citations of the same principle. The carrier therefore submits that the claimants claim is without merit. Further, the carrier is fully supported by the precedent awards. Accordingly, the claim should be denied.

CONCLUSION: The carrier has shown:

1. The Second Division has no jurisdiction to decide this dispute and accordingly the claim should be dismissed without hearing the dispute further.
2. Notwithstanding the lack of jurisdiction of the Second Division to hear this dispute, but expressly not waiving the jurisdiction, the Carrier submits that there is no merit in the claim and accordingly it 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 employee or employees involved in this dispute are respectively carrier and employee within the meaning of the Railway Labor Act as approved June 21, 1934.

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

Claimant is a Coal Pier Laborer employed by Carrier at Newport News, Virginia.

Jurisdiction of the Second Division to entertain this dispute has been challenged on the ground that Section 3, First (h) of the Railway Labor Act confers no jurisdiction upon us to do so.

Section 3, First (h) of the Act reads in part as follows:

"Second Division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheet-metal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employes, and railroad-shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employes.

" * * * * *

"Fourth Division: To have jurisdiction over disputes involving employes of carriers directly or indirectly engaged in transportation of passengers or property by water, and all other employes of carriers over which jurisdiction is not given to the first, second, and third division. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employes."

The controlling agreement with which we are here concerned is between the Carrier and Line-Catchers, Water Tenders, and Coal Pier Laborers at Newport News, Va.; * * * * * represented by the International Brotherhood of Firemen, Oilers, Roundhouse and Railway Shop Laborers, effective April 16, 1950.

The work of Line-Catchers, Water Tenders and Coal Pier Laborers at Newport News is described generally in this record as the handling of lines and winches used on and about vessels docking at the piers, handling of coal and ore spillage on and about the coal and ore piers, putting drinking water on boats, and such other general work consistent with their classification on and about the piers in connection with the loading and unloading of boats.

While ordinarily, disputes, concerning members of the Firemen and Oilers Brotherhood come to this Division, and in fact a representative of that Brotherhood sits as a Member of this Division, nevertheless, Section 3, First (h) (supra), determines jurisdiction not by Organization, but by class or craft. The only classification under which Claimant could possibly come would be that of a "railroad shop laborer," a class to which he does not belong, as is apparent from this record.

Accordingly, we can come to no other conclusion that we lack jurisdiction, and without prejudice to the merits of the controversy, we must dismiss the claim.

AWARD

Claim dismissed, without prejudice, for want of jurisdiction.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.