

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the provisions of the current Agreement on August 20, 1947, by reinstating with full seniority rights and vacation privileges Roadway Machine Mechanic H. V. Johnson, Jr., who the Carrier had dismissed for cause on May 31, 1947;

(2) That the Carrier make the necessary adjustments in the seniority status and vacation privileges of H. V. Johnson, Jr.;

(3) That the Carrier reimburse all employees who have suffered any monetary loss by reason of this improper action on the part of the Carrier.

OPINION OF BOARD: Haskell V. Johnson, Jr. entered the service of the Carrier on December 18, 1936 as a mechanic helper. On May 31, 1947, he was dismissed from the service of the Carrier for cause. He took no appeal from the dismissal and the severance of the employer-employee relationship became complete. He made several requests for leniency and finally on August 20, 1947, the Carrier reinstated him with seniority unimpaired. The Organization concedes the right of the Carrier to reinstate Johnson, but contends that it may not restore his seniority without its consent.

The position of the Organization is the correct one. When Johnson's dismissal was put into effect, his employment with the Carrier was completely severed. Other employees as a result of the dismissal had rights accrue to them that could not be ignored by the Carrier. The additional rights which accrue to an employee when one senior to him leaves the service of the Carrier arise by virtue of contract provisions and one party thereto cannot properly infringe upon such rights thus acquired unless the contract so provides. Awards 1243, 1419, 2093. No such provision of the controlling Agreement authorizes the Carrier to reinstate a dismissed employee with seniority unimpaired. We find that the reinstatement of Johnson was proper, but that the restoration of his seniority rights unimpaired was not.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the Carrier and the Employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was violated as charged.

AWARD

Claims (1), (2) and (3) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1948.