

Award Number 3098

Docket Number CL-3170

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Edward F. Carter, Referee)

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

SOUTHERN PACIFIC COMPANY—PACIFIC LINES

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

Mrs. H. C. Carrasco be compensated in accordance with the provisions of Award No. 333 of Third Division, National Railroad Adjustment Board.

EMPLOYEE'S STATEMENT OF FACTS: We respectfully request your honorable Board to refer to our submission in Docket Case No. CL-262 and which resulted in Award No. 333, sustaining our claim in the following language:

"AWARD

Claim sustained to the extent that the displacement sought be permitted, without prejudice to the right to compensation for actual past wages lost after demonstration of fitness and ability."

Submission in Docket CL-262 will show that June 1, 1931 was the date on which Mr. Carrasco should have been permitted to displace on the position of Assistant Chief Clerk in the Commissary Accounts Bureau, rate \$8.18 per day, but being denied access to this position, he, under protest, displaced on position rated at \$7.41 per day, thereby suffering a wage loss of seventy-seven cents per day to and including September 30, 1934.

On October 1, 1934 Mr. Carrasco was granted leave of absence to serve as full-time Division Chairman for this Brotherhood at the General Office of the Carrier in the City of San Francisco.

Mr. Carrasco continued on leave of absence as Division Chairman of the Brotherhood until in the month of January, 1939, he was by the Governor of the State of California appointed State Labor Commissioner. He was granted a further leave of absence and occupied the position of State Labor Commissioner until, due to change of administration, he relinquished the position and, on January 3, 1944, returned to service of Southern Pacific Company.

From the foregoing recitation of chronological events, it will, of course, be apparent to your honorable Board that at the time Award No. 333 was rendered, November 9, 1936, Mr. Carrasco was not working for the Carrier but was on leave of absence until January 3, 1944.

Upon his return to service with the Carrier on January 3, 1944, Mr. Carrasco exercised his right of displacement to obtain position of Assistant Chief Clerk in Commissary Accounts Bureau, Office of Auditor of Miscellaneous Accounts, the very same position to which he was denied access in 1931, which was cause for action resulting in Award No. 333 of your honorable Board.

The respondent carrier hereby formally protests against the Third Division, National Railroad Adjustment Board, receiving, docketing, hearing or deciding this case and submits this, its petition for dismissal of this case and submits this, its petition for dismissal of this case, on the following grounds:

1. The claim is confined to a request upon the Third Division, National Railroad Adjustment Board, to enforce payments under an award rendered by said Third Division, National Railroad Adjustment Board, namely Award No. 333, Docket No. CL-262, rendered on November 9, 1936.

2. Without in any way admitting that there is any basis for payment to Mr. H. C. Carrasco under the aforesaid award but on the contrary emphatically denying that any such basis for payment exists, the respondent carrier avers and asserts that the Third Division, National Railroad Adjustment Board, is without jurisdiction to enforce payment of money claimed under Award No. 333 or any award it has rendered or may render which involves the payment of money; that by virtue of the specific provisions of the Railway Labor Act, particularly Section 3 (p) thereof, any person or petitioner claiming a money payment under an award of the National Railroad Adjustment Board can only enforce such payment by recourse to the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates.

For the reasons above cited, the respondent carrier contends that the Third Division, National Railroad Adjustment Board, must reject the submission proposed to be filed by the Grand President of the petitioning Brotherhood or if such submission is not rejected the case must be dismissed for want of jurisdiction.

OPINION OF BOARD: The primary question in this case is whether the Board has jurisdiction to hear the claim. It is the contention of the Carrier that it is a request to enforce payment of an award, a matter which is within the exclusive jurisdiction of the federal district courts by virtue of Section 3 (p) of the Railway Labor Act.

The record discloses that H. C. Carrasco on June 1, 1931, sought to displace the occupant of the position of Assistant Chief Clerk in the Commissary Accounts Bureau, rate \$8.18 per day. The position was denied him by the Carrier and he was obliged to exercise his seniority rights to a position rated at \$7.41. A claim was made that Carrasco had the fitness and ability necessary to perform the work of the position and that he should be paid the difference in the rates of pay of the positions for the time it was denied him. The claim came to this Board in due time and on November 9, 1936, an award was made in the following language:

"Claim sustained to the extent that the displacement sought be permitted, without prejudice to the right to compensation for actual past wages lost after demonstration of fitness and ability."

During the pendency of the claim, however, Claimant was granted a leave of absence to serve as full time Division Chairman for his Brotherhood at the General Office of the Carrier in San Francisco. He continued in this capacity until January 1940, when he was granted a further leave of absence in order that he might occupy the position of State Labor Commissioner for the State of California. He relinquished this position on January 3, 1944 and exercised his right of displacement to the very position which had been denied him on June 1, 1931, and which had resulted in the award hereinbefore set forth. He has since filled the position in a satisfactory manner and after having done so for a reasonable period, the present claim was made in the following language:

"Claim of the System Committee of the Brotherhood that: Mr. H. C. Carrasco be compensated in accordance with the provisions of Award No. 333 of Third Division, National Railroad Adjustment Board."

The Carrier in the written presentation of its case as well as in the oral presentation before the Board with the writer sitting as a member thereof relied solely upon its assertions that this Board was without jurisdiction to hear the claim because it was an attempt to enforce a former award, a matter over which the federal courts alone had jurisdiction.

We think the Carrier is in error in its contention. The first award in this case recognized that no final money award could be made until it was first determined that Claimant had the fitness and ability necessary to entitle him to the position. The award itself contains no language even intimating that a money award had been made, in fact it reserved the right to obtain a money award in the event the question of Claimant's fitness and ability was determined in his favor. The award, No. 333, was in the nature of an interlocutory award. It did not purport to be a final disposition of the claim. It is the contention of the Organization, and the correct one we think, that when evidence was produced to sustain the issues remanded in Award No. 333 a claim could properly be made for a money award. The statement of claim merely asks this Board to now do what it could not do when Award No. 333 was made. A sustaining of the claim will result in the only money award that has been made on Carrasco's claim. It will be the only award that has afforded any relief to the Claimant on his claim. We think the jurisdictional question raised by the Carrier is wholly without merit.

Carrier has offered no evidence to show a want of fitness and ability on the part of Carrasco for the position denied him on June 1, 1931. Carrier does contend that proof of fitness and ability in 1944 does not prove fitness and ability in 1931, or even in 1936 after Award No. 333 was made. We agree that such evidence is so remote as to have little weight, but where, as here, no evidence is produced to dispute it, we are obliged to say that it is sufficient to sustain an award. Consequently, an affirmative award must follow.

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 Employees involved in this dispute are respectively carrier and employees 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 alleged.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1946.