

Award No. 2839
Docket No. 2952-I
2-GN-I-'58

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

GREAT NORTHERN RAILWAY COMPANY

GUY H. ROSE (Boilermaker-Helper)

DISPUTE: CLAIM OF CARRIER:

"Claim of Great Northern Railway Company, that it be sustained in its action in denying boilermaker-helper Guy Rose the exercise of seniority as a roundhouse laborer on March 3, 1954, on the grounds that he did not have seniority as a roundhouse laborer."

This dispute was initiated by Boilermaker-Helper Guy Rose in an effort to displace employes who held seniority and positions as roundhouse laborers, after he had been furloughed as a boilermaker-helper in a force reduction on March 3, 1954. However, Mr. Rose has been unwilling to submit the question to the National Railroad Adjustment Board, Second Division, for a final and binding award and determination as required by the provisions of the Railway Labor Act. In lieu of this, he has attempted and is attempting to invoke the jurisdiction and processes of the United States District Court for the District of North Dakota in an action seeking substantial damages for alleged wrongful discharge from the service of the carrier in the craft of roundhouse laborers.

In accordance with the provisions of Section 3 of the Railway Labor Act, as amended, which vests in the National Railroad Adjustment Board sole and exclusive jurisdiction of disputes involving the interpretation and application of agreements covering rates of pay, rules or working conditions of the parties subject to such act, the carrier has elected to take the initiative in progressing and presenting this dispute for determination by this Board.

CARRIER'S STATEMENT OF FACTS: Guy H. Rose was first employed by the Great Northern Railway on September 10, 1928 as a roundhouse laborer at Grand Forks, North Dakota, and was continuously employed in that capacity until June 4, 1934, when he became a boilermaker-helper at the same point. Rose was continuously employed at Grand Forks as a boilermaker-helper until March 2, 1954, when he was furloughed in proper seniority order due to force reduction in that craft.

Each January of every year since Guy Rose first became employed, carrier has posted on the designated bulletin boards at Grand Forks roundhouse a seniority roster of roundhouse laborers, showing names and seniority dates of

First Division Awards: 11490, 12540, 12782 and 17899.

In light of the foregoing, it is clear that Guy Rose had an affirmative duty to inspect the seniority roster posted for roundhouse laborers during January of each year, in order to make certain that his name and seniority date continued to appear thereon. When Mr. Rose's name was omitted from the laborers' seniority roster in 1937, he had thirty (30) days in which to file a formal protest, however, he waited sixteen (16) years to do so. Even in the absence of a time limit rule, it could hardly be said that Mr. Rose exercised due diligence in protecting his seniority rights.

The time limit rule for protesting seniority roster errors has always been well known and understood among the employees. Mr. Rose had ample opportunity to inspect the roundhouse laborers' roster, since he was employed at the same roundhouse in the capacity of a boilermaker helper from 1934 until 1954 when he was furloughed. He has continued to protect his seniority rights as a boilermaker helper to this date.

Effective January 1, 1942, the craft and class of roundhouse laborers on this property elected as their duly authorized representative the International Brotherhood of Firemen and Oilers, Helpers and Railway Shop Laborers. That organization entered into a new contract with the carrier which protected and extended the seniority rights of employees who held those rights as roundhouse laborers on January 1, 1942. However, the new agreement in 1942 extended seniority rights only to those employees who held rights on January 1, 1942. Since Guy Rose had lost his roundhouse laborer's seniority rights long before 1942, by his failure to protest the omission of his name from the seniority roster in 1937, he acquired no better seniority rights as a roundhouse laborer through the new agreement in 1942.

Rule 8 (b) of the agreement in effect on March 3, 1954, clearly allows displacement of roundhouse laborers by exercise of seniority, only by employees who hold seniority rights in the craft and class of roundhouse laborers. Since it is clear that Guy Rose held no seniority as a roundhouse laborer on March 3, 1954, the carrier's action in refusing to allow him to exercise any such seniority rights was entirely proper. Therefore, the carrier respectfully requests that its claim be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

This dispute was initiated by Boilermaker Helper Guy Rose in an effort to displace employees who held seniority and positions as roundhouse laborers after he was furloughed as a boilermaker helper on March 3, 1954.

In accordance with the Railway Labor Act as amended the carrier progressed this dispute to the Second Division of the National Railroad Adjustment Board. Hearing was held after due and proper notice to all parties to this dispute. Boilermaker Helper Guy Rose did not elect to appear or reply to the carrier's submission.

From the facts of record we find that Guy Rose entered the Railway Company's employ on September 10, 1928, as a laborer, but on June 4, 1934, he became a boilermaker helper, a position not within the Firemen and Oilers' craft, and has been at all times since an employe of the Great Northern Railway Company in the capacity of a boilermaker helper in its roundhouse at Grand Forks, North Dakota, holding seniority rights as such under, and subject to terms and conditions of employment prescribed by, a collective bargaining agreement completely separate and distinct from that applicable to the Firemen and Oilers' craft, negotiated by a different organization than this Brotherhood, and conferring rights on Guy Rose only within the Boilermakers' craft and not within the Firemen and Oilers' craft.

On or about March 2, 1954, a reduction of the Railway Company's forces resulted in Guy Rose and other employes being laid off or furloughed from their positions as boilermaker helpers. Said lay-off or furlough was effected in accord with the seniority rights of such employes as boilermaker helpers, in full compliance with the agreement applicable to employes in such classification, and Guy Rose has not then or thereafter been denied the right to exercise any seniority rights held by him. Guy Rose did seek to exercise seniority as a laborer, to displace other persons employed as such and listed on the Firemen and Oilers' craft seniority roster, but was not permitted to do so for the reason that he possessed and possesses no seniority rights in the laborers' classification.

Seniority rights of all employes arise out of contracts between the employer and the employe and/or his duly authorized representative, and exist only to the extent provided by the contract which created them. See Award 272.

The position of the carrier in this docket must be sustained.

AWARD

Claim sustained per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 8th day of May, 1958.