

Award No. 4073
Docket No. 4208-I
2-N&W (Va.)-I-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

R. R. THOMPSON, MACHINIST HELPER
NORFOLK & WESTERN RAILWAY (VIRGINIAN RAILWAY)

DISPUTE: CLAIM OF EMPLOYEE: Employee R. R. Thompson held seniority as machinist's helper from December 2, 1922, with the Virginian Railway. At the time of the merger, he was employed at the Victoria Shops. His employment was terminated on November 20, 1959. On December 31, 1959, the Victoria Shops were closed as a result of the merger. At the present time, there are helper machinists working at the Roanoke Shops with less seniority than that held by Thompson.

EMPLOYEES' STATEMENT OF FACTS: R. R. Thompson held seniority as a machinist's helper with the Virginian Railway from December 2, 1922. Thompson worked in the Virginian Shops at Victoria, Virginia, until November 20, 1959, which was five months after the merger of the Virginian Railway with the Norfolk & Western Railway on June 18, 1959. The shops at Victoria were closed on December 31, 1959, as a result of the merger, but according to the records of the Norfolk & Western Railway, Thompson holds seniority as machinist's helper from December 1, 1959. His seniority as a machinist's helper with the Virginian Railway was dated from December 2, 1922. His helper machinist seniority with the Norfolk & Western Railway is at the Roanoke Shops. Although Thompson had the oldest seniority at the Roanoke Shops, other helper machinists with less seniority were continued in employment in these shops after Thompson was discharged on November 20, 1959, and these helper machinists had less seniority than Thompson held at the Victoria Shops. At the present time, there are helper machinists working at the Norfolk & Western Railway Roanoke Shops with less seniority than that held by Thompson. He was not offered employment at the Norfolk & Western Roanoke Shops after his discharge on November 20, 1959, from the Virginian Victoria Shops. The Virginian Victoria Shops were closed because of the merger.

The Norfolk & Western Railway has stated that the November 24, 1959, implementing agreement provided that employees holding regular positions on June 18, 1959, could not be furloughed because of the merger. The number of machinist's helpers employed by the Norfolk & Western dropped from 103 in 1958 to 42 on June 18, 1959, the date of the merger. The Norfolk & Western is using machinists to do the work that was formerly done by machinist's helpers.

thorized representative and exist only to the extent provided by the contract which created them. Your Board has recognized this principle in many previous awards. See Second Division Awards 272 and 2839. Carrier asserts that the above quoted rules and sections have been complied with in all respects, and petitioner was accorded his full seniority rights under the terms of the current agreements.

Subsequent to December 1, 1959, Thompson continued to be carried in a furloughed status as helper machinist at the Norfolk and Western Roanoke Shops (East End). In February, 1962, due to a helper machinist retiring, a helper machinist was needed and Thompson stood No. 1 to be recalled, as shown on the Roanoke Shops (East End) seniority roster. Accordingly, two letters, one dated February 9, 1962, and the second dated February 24, 1962, were written Thompson by his employing officer, recalling him to work. Thompson did not reply to either of these two letters, nor did he return to work. The only communication carrier received regarding this recall was a telephone call from Attorney Young to a member of carrier's Law Department. Mr. Young stated he would allow Thompson to return to work if it would not jeopardize his claim. Mr. Young was informed that the recall was in no way connected with his claim, but merely that carrier needed a helper machinist at Roanoke Shops and Thompson was being recalled in line with his seniority. As stated above, Thompson did not return to work and has been dropped from carrier's rolls.

Petitioner, in his notice of intention to file a submission in this case, has indicated he will rely on certain affidavits of R. E. Thompson and Mrs. R. E. Thompson concerning conversations held with Carrier's Master Mechanic R. R. McDaniel. It will be noted in Master Mechanic McDaniel's affidavit he states that petitioner did not hold a regular position on June 18, 1959, and that he did not advise any person contrary to this fact.

Carrier wishes to point out that the affidavits of R. E. Thompson and Mrs. R. E. Thompson are of no value in determining the merits of this dispute, as what Master Mechanic McDaniel may or may not have said is immaterial. Petitioner's rights must be determined in accordance with the current agreements applicable to him.

Carrier has given the facts in this case leading to the integration of Thompson's seniority. No error was made and petitioner was accorded his full seniority and employment rights under the terms of the current agreements applicable to him. Carrier has shown that petitioner's claim is without merit and requests that it be denied.

As stated before, carrier is uncertain as to just what petitioner's claim is and his justification for it. Further, petitioner failed to return to service when called in line with his helper machinist seniority, leaving carrier at a complete loss to understand the purpose of his claim.

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 employes 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 waived right of appearance at hearing thereon.

This Division finds on the basis of evidence in this docket that a merger took place between the Virginian Railway Company and the Norfolk and Western Railway Company.

As a result of this merger the duly authorized representatives of the employes and the carrier, pursuant to the Railway Labor Act, did negotiate an agreement providing for the protection of employes affected by the merger. The effect of this agreement did provide an exception to Rule No. 30 of the applicable agreement—to permit dovetailing of seniority among specified affected groups of employes. The record does not reflect any violation of the Memorandum of Agreement dated November 24, 1959.

Therefore, we find the claimant was not denied his seniority. Nor is there any evidence of improper application of the aforestated agreement in the dovetailing of seniority.

AWARD

Claim denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November 1962.