

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (System Federation No. 4, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Baltimore and Ohio Railroad Company

Dispute: Claim of Employees:

1. That the Carrier violated the provisions of the controlling agreement of July 17, 1946 when they did not allow Claimant Allan Moser to be promoted for ten (10) days under the Agreement.
2. That the Carrier be ordered to compensate Claimant Allan Moser for May 21, 22, 23, 24, 28 and 29, 1973, for a total of 48 hours.

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.

Claimant was employed by Carrier as a Carman Helper at Youngstown, Ohio, and held seniority as of June 7, 1969, upon upgrading to temporary Carman, he established seniority in that capacity as of July 18, 1969.

Claimant was furloughed on October 7, 1971. He was called in by Carrier on May 20, 1973 and filled the position of a Carman absent from work on that day.

Petitioner contends that on May 20, 1973 Claimant was upgraded to Carman and thereby was entitled to payment in accordance with the provisions of the July 17, 1946 agreement, which reads, in part, as follows:

"Day by day vacancies of less than ten days' duration will not under any circumstances be filled by promoting apprentices or helpers.

"Vacancies of ten days or more duration may be filled by promoting apprentices or helpers. Promoted apprentices or helpers who fill such vacancies must be given at least ten days' pay at the mechanic's rate and in reduction of forces, the Shop Craft Rules will apply."

Petitioner maintains that when furloughed, Claimant was demoted to Carman pursuant to the provisions of Article III of the June 4, 1953 agreement relating to upgrading of Carman helpers and apprentices which reads:

"In the event of force reduction, in the absence of other existing arrangements, demotion shall be in the reverse order to that of upgrading."

Petitioner also relies on the assertion in Carrier's Circular No. 1415, dated June 3, 1955, that although the June 1, 1955 agreement provided minimum service requirements for upgrading apprentices and helpers to temporary carman, "it should be understood that the remaining provisions of the July 17, 1946 Memorandum of Understanding continue in effect."

It is the position of the Carrier that the July 17, 1946 agreement is not applicable. Carrier contends that the Claimant was not promoted on May 20, 1973 in that he had established seniority as temporary carman pursuant to the August 27, 1965 agreement, and that he was properly called in and used on the date mentioned in accordance with his written request to fill temporary vacancies under Article IV of the August 21, 1954 and paragraph (2) of the December 1, 1972 agreement.

We find that on the undisputed factual situation presented by the record in this case, the Carrier's position is persuasive. The agreements of July 17, 1946 and June 4, 1953 did not provide that apprentices and helpers upgraded to temporary carman or a temporary mechanic should acquire status on a roster of that nature. However, the August 27, 1965 agreement amended the previous agreements by provisions that helpers promoted temporarily to mechanic positions shall be accorded seniority on a "Temporary Mechanics' Roster". That agreement also included the following provision:

"4. Relative position or standing on the respective 'Temporary Mechanics' Rosters' shall govern on recall, furlough and assignment to position."

Nothing in the record suggests that the Claimant relinquished or forfeited the seniority date which he acquired as of July 18, 1969 on such "temporary" seniority roster. We cannot say that the Claimant was necessarily demoted from temporary carman status when he was furloughed on October 7, 1971. It is clear that paragraph 4 of the August 27, 1965 agreement, quoted above, contemplates application on furlough and recall of the temporary carman seniority date which is July 18, 1969 in the case of the Claimant, and not his longer seniority, effective June 7, 1969, as carman helper. Thus, Claimant's temporary carman status continued after furlough.

The record establishes that on January 30, 1973 the Claimant filed with Carrier a written request to fill temporary vacancies under the provisions of Article IV of the August 21, 1954 agreement, which reads, in pertinent part, as follows:

"(a) The Carrier shall have the right to use furloughed employees to perform extra work, and relief work on regular positions during absence of regular occupants, provided such employees have signified in the manner provided in paragraph 2 hereof their desire to be so used....

(b) Furloughed employees desiring to be considered available to perform such extra and relief work will notify the proper officer of the Carrier in writing, with copy to the local chairman, that they will be available and desire to be used for such work...."

The record does not confine or limit the Claimant's aforementioned request for work to carman helper vacancies or preclude use of his temporary carman status in accordance with the agreement effective December 1, 1972 that:

"(1) Employees covered by the Shop Crafts Agreement and International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers who are furloughed and made request for work under Article IV of the August 21, 1954 Agreement will, when used, be subject to the following:

(2) Positions which are filled hereunder will be filled on a day to day basis.

On the record and facts in the instant case, we are constrained to conclude that the provisions of the July 17, 1946 agreement relied on by the Petitioner for the instant claim are not applicable and the claim must be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

Attest: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of February, 1977.