Award No. 581
Docket No. 599
2-T&P-CM-'41

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the current agreement was violated when Carman Helper J. O. Slater was assigned to work at Donaldsonville, Louisiana, a one-man point on the Texas and Pacific Railroad; that C. B. Watson shall be compensated for all time or equal amount of money earned by J. O. Slater after November 26, 1939, which date the violation could have been corrected. That J. O. Slater has established no seniority at Donaldsonville, Louisiana.

EMPLOYES' STATEMENT OF FACTS: Donaldsonville, Louisiana, is a small town sixty-five miles from New Orleans on the Texas and Pacific Railway, and in the sugar cane raising part of the state. Since the railroad hauls a large amount of sugar cane to the mills on the cars, a carman is located at Donaldsonville during the cutting season. During the seasons of 1937 and 1938, Carman J. C. Wall worked this job. Since that date, Mr. Wall has become disabled.

POSITION OF EMPLOYES: When the season opened last year, 1939, the management canvassed certain employes with a view of securing a man for the place. (see Exhibit C, Mr. Denney's letter of December 6, 1939) and finally placed Carman Helper J. O. Slater on the job. This constituted a violation of Rule 10, which reads:

> When new jobs are created or vacancies occur in the respective crafts the oldest employes in point of service shall, if sufficient ability is shown by trial, (fifteen (15) days be considered sufficient trial) be given preference in filling such new jobs or any vacancies that may be desirable to them. All permanent vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given the local chairman.

At Donaldsonville, La. no carmen hold seniority and no carmen are furloughed, but at several points on the line, carmen were furloughed among these points were Shreveport, Texarkana, and Marshall. In order to have complied with the above quoted rule, the job should have been bulletined at points where carmen were on furlough and gave these men a chance to avail themselves of the rule by placing bids on the job if they so desired.

Rule 20 is seniority rule and paragraph (A) reads:

> Seniority of employes in each craft covered by this agreement shall be confined to the point **and seniority subdivision employed.**

The Board will please understand the claimant, Watson, held seniority at Hollywood yard only and was at the time furloughed.

The only contractual obligation in calling employes back to service is in accordance with Rule 18, (c); in the restoration of forces at that point, Hollywood yard, in accordance with seniority at Hollywood yard, if available. He would not be available within the meaning of the rule unless he had complied with paragraph (d) of this same rule by filing with the local supervisor his address.

The only provision under the agreement to give men cut off at one point preference to work at other points is that as provided for in paragraph (i) of Rule 18:

> "When reducing forces, if men are needed at other points, they shall be given preference to transfer.* * *"

There was no force reduction being made at Hollywood at the time that Slater was sent to Donaldsonville. Watson had been cut off at that point long prior to this time; therefore, Rule 18 (i) would not be applicable.

There is no rule requiring the carrier in putting on a position, or in filling a vacancy as in this case, to call men furloughed and holding seniority at other points and offer them work at a point where they hold no seniority. It is the policy of the carrier to do so in order to give employes cut off work in preference to taking into the service new men and this policy is and was followed in this case.

An employe holding seniority at one point, (as was Watson in the case at issue, at Hollywood yard.) is not required by the agreement to accept service at another point, and declining to do so would not affect his seniority status at the point where he holds seniority. No penalty is imposed upon the employe if he declines service at other points; likewise, there could be no penalty imposed upon the carrier should it fail to offer employment at another point.

In conclusion, would call attention to Rule 22 (b), reading:

> Should an employe subject to this agreement believe he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case may be taken to the Foreman, General Foreman, Master Mechanic or Shop Superintendent, each in the order named, by the duly authorized local committee or their representative, within ten (10) days. Requests for conference to be in writing stating the subject to be discussed. All conferences between the local officials and the local committee to be held during regular working hours without loss of time to committeemen.

By referring to our Exhibit B, Master Mechanic Denney's letter to Mechanical Superintendent Prendergast, third paragraph, it will be noted a few days after making the assignment of Slater at Donaldsonville the master mechanic advised General Chairman Nichols of this assignment and Mr. Nichols stated that same was satisfactory to him and no complaint or grievance of any kind was made by either Watson or General Chairman Nichols in connection therewith until November 15, some thirty-five days after the appointment.

The rule specifically provides for a limitation of ten days in presenting a grievance if the employe feels that he has been unjustly dealt with; therefore, if Watson or his committee felt that he was unjustly dealt with they must, under the rule, handle the matter within ten days, and if not so handled they are thereafter foreclosed from doing so on the basis of unjustly dealt with and claiming compensation.

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.

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

Rule 18 (i) of the current agreement provides:

> When reducing forces, if men are needed at other points, they shall be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company, seniority to govern.

The above paragraph of the rule of agreement mentioned is silent on the method of its application; however, when read in conjunction with letter signed by mechanical superintendent, dated September 21, 1939, addressed to the general chairman and which is part of the submission, referring to the posting of bulletin where vacancies exist at outside points, supports the contention of the employes that this letter decided the method of application of Rule 18 (i) on this particular property. Therefore, the vacancy which occurred at Donaldsonville was not filled in accordance with the understanding of what is contained in mechanical superintendent's letter of September 21, 1939.

The claim for compensation based on the evidence of record is without merit.

AWARD

Claim sustained, except for compensation which is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of March, 1941.