

Award No. 1180

Docket No. 1105

2-StLSF-CM-'47

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—(CARMEN)**

**ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY
(Frank A. Thompson, Trustee)**

DISPUTE: CLAIM OF EMPLOYES: That Coach Cleaner Lonnie Ward is entitled to be restored to service and to pay for all time lost retroactive to April 21, 1946.

EMPLOYES' STATEMENT OF FACTS: On May 19, 1941, J. H. Garner entered the service of the carrier as a coach cleaner at Hayti, Missouri. On April 16, 1943, he was promoted to the rank of carman helper, and on October 3, 1944, he was advanced to the rank of a journeyman in the carmen's craft, in which status he remained until displaced through a force reduction when he was permitted to displace Coach Cleaner Lonnie Ward, effective April 21, 1946.

On January 16, 1945, Lonnie Ward entered the service of the carrier as a coach cleaner, and remained in the service as such until displaced by First Class Carman J. H. Garner on April 21, 1946.

POSITION OF EMPLOYES: It is submitted that the carrier wrongfully deprived Coach Cleaner Lonnie Ward, hereinafter referred to as the claimant, of his service rights as such, when the carrier permitted First Class Carman Garner to displace him on April 21, 1946.

It is plain to be seen from the foregoing factual statement that Mr. Garner was promoted to a journeyman classification in the carmen's craft prior to the effective date of the current agreement. This being true, it is then obvious in accordance with that part of the second paragraph of Section 3, of Rule 30, of the current agreement, reading—

“Men promoted to journeyman classification prior to the effective date of this agreement, will be permitted to exercise seniority in helper classification **only** in the event he is displaced through force reduction as journeyman.” (Emphasis supplied.)

that Mr. Garner's dual seniority ended within the seniority roster of carman helper, within the clearly expressed terms of the above quotation, and the fact that he was displaced through force reduction as a journeyman

Submitted as Exhibit E is a sheet showing seniority rosters for coach cleaners, Hayti, Missouri, January 1st of each year 1943, 1944, 1945 and 1946. It will be noted Mr. Garner's name appears on each of these seniority rosters. Rule 30, Section 1, of agreement effective January 1, 1945, contains the following paragraph:

"Seniority lists shall be revised and posted in January of each year on bulletin board at each seniority point. A seniority date not protested in writing within thirty (30) days from its first posting on a roster after the effective date of this agreement will be considered permanently established. Typographical errors on subsequent rosters may be corrected at any time. Copy of seniority lists will be furnished Local and General Committee."

No protests were made within the time limit prescribed in this rule of Mr. Garner's seniority date as a coach cleaner, in fact no protest of any kind was made until after he displaced Lonnie Ward.

The employees have made claim in Lonnie Ward's favor for pay for all time lost. When Mr. Garner displaced Mr. Ward, there was no place Mr. Ward's seniority would entitle him to bump and he was, therefore, furloughed and in the same status, so far as that part of the claim is concerned, as a discharged employee. Rule 35 of agreement effective January 1, 1945, provides if an employee is improperly discharged, he shall be reinstated with his seniority rights unimpaired "and compensated for wage loss, if any, less amounts earned in other employment, resulting from said suspension or dismissal". Therefore, if it should be held Mr. Ward was improperly displaced and any claim sustained for wage loss, it should be less amounts earned in other employment.

It is our position Mr. Garner retained his seniority as coach cleaner when he was promoted to third-class mechanic and later promoted to car inspector, and was, therefore, properly permitted to displace Lonnie Ward, his junior as coach cleaner, and that this claim should be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

We find that this employee was improperly displaced under Rule 30 of the working agreement. It is found in the evidence submitted that the carman who displaced Coach Cleaner Ward had his name improperly carried on the coach cleaners' seniority roster, 1945 and 1946, without protest or through oversight.

AWARD

Lonnie Ward should be restored to the service of the carrier with seniority rights unimpaired and paid for all time lost less what he earned at other employment from April 21, 1946.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of May, 1947.