

Award No. 1255
Docket No. 1170
2-SP(PL)-BM-'48

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES: That under the provisions of current agreements the carrier be ordered to correct the seniority date of Homer Edgar Doyle on the boilermaker helpers' seniority roster from April 7, 1943 to December 4, 1946.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed Homer Edgar Doyle as a boilermaker helper at its West Oakland, California, roundhouse on April 7, 1943, and he remained in the service as such until inducted in the United States Army on December 27, 1943.

The United States Army honorably discharged Mr. Doyle on November 10, 1945, and about 5 months thereafter, or on April 9, 1946, he reported to the proper carrier officer at the roundhouse for reentering the service as a boilermaker helper. Thereupon Mr. Doyle was advised by said carrier officer that since he had not made application for resuming his position as a boilermaker helper within the 90-day grace period from the date released by the Army, he could not be restored to service with seniority rights as a boilermaker helper. However, Mr. Doyle was employed in the roundhouse as a laborer on May 4, 1946, where he remained as such until outside influence persuaded the carrier to restore him to the position of boilermaker helper on December 4, 1946, and to his former seniority date as such of April 7, 1943.

These facts are substantiated by copies of the letters submitted, identified as Exhibits A and A-1, respectively, dated February 8 and July 12, 1947, addressed to the undersigned by Mr. B. M. Brown, the highest designated carrier officer to whom this dispute was subject to appeal.

The agreement effective April 16, 1942, as amended by agreement of letters, copies of which are submitted and identified as Exhibits B and B-1, respectively, dated July 8 and 16, 1942, and a copy of the memorandum referred to therein, submitted and identified as Exhibit B-2, is controlling.

POSITION OF EMPLOYEES: It is submitted that on the basis of the provisions of the controlling agreements and the indisputable facts, the carrier was without authority to grant Mr. Doyle seniority rights as a boilermaker helper effective at any time other than on the date he was last employed as such for which he was paid, and this occurred on December 4, 1946. This is supported by that part of Rule 31, captioned "Seniority—When Begins", reading:

That question arises because a doubt exists as to whether Doyle applied for reemployment within ninety (90) days from date he was released from the Army, as required in Item 3 of Section 8(b) of the Selective Service Act. It is not disputed that Doyle fulfilled the remaining provisions of Section 8(b) of the Act.

Doyle was honorably discharged from the Army on November 10, 1945, and on January 12, 1946 (63 days after the date of his discharge) allegedly wrote a letter to the carrier's master mechanic advising that he had been discharged from the armed forces and requesting transportation in order that he might return to work (Exhibit A). While the carrier has no record of having received the original of that letter, the carrier agreed with representative of the Selective Service System (Exhibit B, sheet 5) that in the light of representation made by the Selective Service System representative that such a letter was written, Doyle would be restored to the seniority status which he occupied prior to leaving the service of the carrier to enter the armed forces, on the basis that evidence had been presented indicating that Doyle endeavored to make application for reemployment within the time limit specified in Section 8 of the Selective Service Act.

There was nothing arbitrary or capricious in the carrier's action in restoring Doyle to his former position and seniority status. In so restoring Doyle to his former position and seniority status, he was given the benefit of the doubt, a benefit which the carrier considers was properly extended to him in the light of the following language of the opinion of the Supreme Court of the United States, delivered on May 27, 1946, by Mr. Justice Douglas, in the case of Fishgold vs. Sullivan Drydock & Repair Corporation et al.:

"* * * This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. * * *"

CONCLUSION

The carrier submits that its action in restoring Doyle to his former position and seniority status was proper in the light of the provisions of Section 8 of the Selective Service Act, and that the claim of the petitioner should therefore be denied.

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.

The question presented by this record is, did Homer E. Doyle ever write and deposit in the United States mail the letter which he claims he wrote at Chickasha, Oklahoma, on January 12, 1946? This letter the carrier never received. If Doyle did write and deposit in the United States mail the letter referred to then he is entitled to have his seniority, as it existed before his entry into the service, restored, for by so doing he applied to return to the carrier's service within the time as provided by both the parties' memorandum of understanding and the Selective Service Act. If he did not, the claim must be sustained, for he did not otherwise apply until after the time therein provided.

Doyle was honorably discharged from the service on November 10, 1945, and from the hospital on December 15, 1945. On April 8, 1946, Doyle applied, in person, to the carrier's assistant master mechanic. On the following day, pursuant to instructions, he applied to the division superintendent. He advised them that he had written the carrier but had received no reply. However, he did not have with him a copy of the letter which he claimed he had written to the carrier, although he had not received a reply thereto. The

carrier advised him that it had never received the letter and had no knowledge thereof. On May 3, 1946, Doyle started working for the carrier as a laborer. Carrier did not at that time restore him to his previous seniority status for the reason that he had not applied for return to service within the time required.

Thereafter, on May 24, 1946, carrier received a letter from Samuel H. Wagener, board member and reemployment committeeman of Local Draft Board No. 73 under the Selective Service System for Oakland, California, concerning Doyle's reemployment status wherein Wagener advised that Doyle had contacted carrier by mail about January 22, 1946. Nothing was done with relation to Doyle's reemployment status because of this letter and apparently the matter remained in that situation until Wagener again wrote carrier under date of November 13, 1946. This letter contained a copy of a copy of the purported letter which Doyle was supposed to have written carrier, but it is dated January 12, 1946. Pursuant thereto, on December 4, 1946, carrier reinstated Doyle to his seniority as it existed prior to his entering the service.

In addition to the copy of a copy of the letter which Wagener furnished the carrier we now have a photostatic copy of a copy thereof which Doyle furnished the carrier, Doyle advising carrier that he made two copies when he wrote the letter. A comparison of the two copies so furnished the carrier, one by Wagener and the other by Doyle, shows that while they contain the same substance they are materially different in form.

From an examination of the evidence in the record, considering the discrepancies that appear therein with reference to Doyle's claim, we have come to the conclusion that Doyle never wrote and deposited any letter in the United States mail addressed to the carrier. Consequently he did not apply for reemployment, after his release from the service, within the time required. The claim must therefore be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 1st day of July, 1948.