

Award No. 1271
Docket No. 1195
2-GC&SF-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. 97, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Boilermakers)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That awarding Turn Table Operator A. House rights—

- a) To displace Boilermaker Helper James Jenkins, effective November 14, 1946,
 - b) To seniority as a Boilerwasher Helper, as of July 9, 1945,
 - c) To seniority as a Boilermaker Helper, as of August 1, 1945, are improper under and inconsistent with provisions of the current agreement.
2. That accordingly the carrier be ordered to correct the seniority dating of A. House in the Boilermakers' craft to conform with the date he entered the service therein November 14, 1946.

EMPLOYEES' STATEMENT OF FACTS: On August 7, 1944, the carrier employed A. House at Temple, Texas, as a laborer, and assigned him as a turn table operator on August 24, 1944, in which position he remained until January 10, 1945, when he entered into the military service.

Mr. House was released from military service and resumed his former position as turn table operator, effective April 1, 1946, where he continuously remained for seven calendar months and thirteen days, or until November 14, 1946.

Prior to August 1, 1945, the positions of turn table operators and boilerwasher helpers were subject to the terms of a miscellaneous agreement, effective July 1, 1937, and each of these said positions paid the same differential rate above that applicable to laborers. Under said agreement, on July 9, 1945, a vacancy for a boilerwasher helper was advertised, and Laborer James Jenkins was assigned to fill that vacancy on the 8 A. M. to 4 P. M. shift.

Effective August 1, 1945, boilerwasher helpers were reclassified as boilermaker helpers and made subject to the current shop crafts' agreement. Then on August 9, 1946, another vacancy for a boilerwasher helper (boilermaker helper) on the 4 P. M. to 12 midnight shift was bulletined and Laborer J. W. Franklin was assigned to that position, effective August 16, 1946. However, after Franklin had filled said position for approximately three

discussed with you by our Committee at an early date this month as we have conferences scheduled with Mr. J. P. Morris at Chicago, starting the morning of January 10th. Our Committee will be glad to meet with you at some convenient time during our stay in Chicago and we will contact you after our arrival for this purpose.

Yours truly,

(Signed) B. O. Bristow,
Secretary,
System Federation No. 97."

Subsequently, and after receipt of Mr. Bristow's letter, the matter of interpreting the military agreement was discussed in several conferences without an understanding having been reached as to its application, and, consequently, correspondence was continued resulting in the understanding set forth in Mr. Kirkpatrick's letter of August 8, 1946, addressed to Mr. Ryan, which is quoted in the carrier's statement of facts.

Both from a legal and an equitable standpoint the request of the organization is unjustifiable and should accordingly be denied. Carrier is hopeful that the Board will bear in mind that the United States Supreme Court has said more than once that the veteran's reemployment rights, which are guaranteed under the Selective Training and Service Act, are to be treated and interpreted liberally in favor of the veteran so that he may receive all the benefits which Congress intended him to have, and that nothing in the collective agreement can limit or defeat the guarantee which Congress has seen fit to give the veteran.

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.

Under the facts as disclosed by the record House's rights upon his return to the carrier's service, as provided by Item 3 of the parties' Letter Agreement, dated October 12, 1940, were as follows: ". . . shall be entitled to reemployment in such position if it is then in existence, or in any vacant or bulletined position which his seniority, determined as provided by paragraph 2 hereof, shall entitle him to bid in, or in any position that became vacant or bulletined during his military service, which, through seniority determined pursuant to paragraph 2 hereof to date of occurrence as established by such bulletin, he would have been entitled to bid in had he not been in military service."

These rights, by the following language in Item 3, to wit: ". . . upon application in the manner and within the time prescribed by paragraph 2 hereof, . . ." relate themselves to the 90-day period of time granted in which to make such application. See Supplement to Letter Agreement of October 12, 1940, dated June 15, 1945. And, as further provided in Item 6 of Letter Agreement, dated October 12, 1940, to which Item 3 thereof is subject, to wit: ". . . any enlisted employe who shall be entitled hereunder to apply for employment in more than one position shall elect by his application which position he shall take, and his election shall govern. . ."

House not having taken advantage thereof, as to the position and rights which he now claims, within that time, that is, the 90-day period, waived any further right to do so under the Letter Agreement. The System Federation's construction of House's rights under the Letter Agreement of October

12, 1940, and Supplement thereto of June 15, 1945, being correct, the claim should be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 20th day of July, 1948