

Award No. 1340

Docket No. 1268

2-L&N-CM-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Carman Helper William Wingfield was unjustly deprived of his service rights when—

(a) On June 4, 1946 the carrier refused to restore him to service as a carman helper.

(b) On January 1, 1947 the carrier removed his name from the Carmen Helpers' seniority roster at West Knoxville, Tennessee.

2. That accordingly the carrier be ordered to restore this employe to his service rights as a carman helper and compensate him for all time lost on and subsequent to June 4, 1946, less any compensation received from other employment.

EMPLOYEES' STATEMENT OF FACTS: William Wingfield, hereinafter referred to as claimant, was employed as a carman helper by the carrier at Knoxville, Tennessee, on September 3, 1944, and worked in this capacity until the close of his regular shift on January 13, 1946; he being shown on all carmen helpers' seniority rosters subsequent to date of employment up to and including January 1, 1946. A copy of the January 1, 1946 roster is submitted and identified as Exhibit A.

Effective 7 A.M. January 14, 1946, this claimant was removed from the service as indicated in Mr. B. F. Moore's letter dated January 13, 1946, a copy of which is submitted herewith and identified as Exhibit B.

On April 23, 1946, the claimant who was a furloughed carman helper as a result of a force reduction as set forth in Exhibit B, was employed as a coach cleaner by the carrier and is now working in this capacity; he being shown on the coach cleaners' 1947 seniority roster at Knoxville, Tennessee, a copy of which is submitted and identified as Exhibit C.

The carrier, on June 4, 1946, employed G. J. McCullough as a carman helper and this is substantiated by Mr. G. C. Howard's letter dated July 29, 1948, a copy of which is submitted and identified as Exhibit D.

seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

it must be found that this claimant was effectually suspended or dismissed and deprived of his service rights on June 4, 1946, and again on January 1, 1947, when his name was removed from the seniority roster and the Honorable Board Members are respectfully requested to sustain our statement of claim.

CARRIER'S STATEMENT OF FACTS: W. Wingfield was employed as coach cleaner at Knoxville May 2, 1942; promoted to carman helper September 3, 1944, and in accordance with the effective agreement dated September 1, 1943, forfeited seniority as coach cleaner; cut off in force reduction January 14, 1946. Subsequently he approached Foreman J. W. Stephens volunteering to forfeit his seniority as carman helper if given consideration for and employed as coach cleaner. Employed as coach cleaner April 23, 1946, and name removed from seniority roster as carman helper.

POSITION OF CARRIER: In removing Wingfield's name from the seniority roster, he was not deprived of any of his rights as carman helper. He approached Foreman Stephens of his own free will and agreed to give up his seniority if he were employed as coach cleaner. The seniority belonged to him only—and if he agreed to give it up, he certainly had a right to do so. In doing so, he, of course, resigned and is not entitled to have his carman helper seniority restored.

Under date of April 6 we furnished General Chairman Poteet statement signed by E. T. Gibson, clerk, West Knoxville, dated February 16, 1949, which read—

"West Knoxville, Tenn.
Feb. 16th, 1949.

TO WHOM IT MAY CONCERN:

I, E. T. Gibson make the following statement of my own free will.

I, did personally hear Mr. W. Wingfield, tell the Mechanical Department Foreman at West Knoxville, Tenn., Mr. J. W. Stephens in his office at the roundhouse, that if he, Mr. J. W. Stephens would rehire him, W. Wingfield, as coach cleaner, he would give up his carman helper's seniority, to accept a job back as coach cleaner.

Signed E. T. Gibson."

We had also previously furnished General Chairman Poteet copy of statement marked Exhibit A signed by 12 laborers at West Knoxville who at one time or another had heard Wingfield make the statement that if Foreman J. W. Stephens would reemploy him as coach cleaner he would forfeit his seniority as carman helper.

Under date of October 9, 1947, Foreman Stephens wrote General Chairman Poteet as follows:

"In regard to your letter of October 1, 1947 case of Coach Cleaner W. Wingfield. Wish to advise this man told me he did not want anything to do with car oiler or car repair helper any more. Just leave me alone as coach cleaner for I don't want to get messed up and lose my seniority as coach cleaner."

The evidence submitted shows conclusively that Wingfield resigned as carman helper, forfeiting his seniority as such when employed as coach cleaner on April 23, 1946. It would not, therefore, be consistent to now restore his seniority as carman helper and carrier insists that claim of employes 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.

From the record before us we find that carrier violated claimant's seniority rights as a carman helper. Accordingly, claimant is entitled to the restoration of his seniority rights and the compensation claimed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.