

Award No. 1579

Docket No. 1490

2-MP-MA-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Machinist Harry E. Boyle was improperly denied his seniority rights when the carrier declined to restore him to service.

2. That accordingly the carrier be ordered to restore the claimant to service in line with his seniority status.

EMPLOYEES' STATEMENT OF FACTS: Machinist Harry E. Boyle, hereinafter referred to as the claimant, was on date of November 7, 1927, employed by the Missouri Pacific Railroad Company as a machinist at Kansas City, Missouri. On or about the 20 day of June 1949, the claimant sustained a personal injury. On or about June 20, 1950, a settlement was reached between the carrier and the claimant, a copy of which is submitted herewith and identified as Exhibit A.

The claimant made an unpredicted recovery and on July 6, 1951, an authorized physician declared the claimant "OK" for service as a machinist. However, the physician did take exception to the condition of his left eye, a condition which had existed since childhood and at the time of his initial employment by the carrier which is admitted by Dr. J. A. Lenbeck in his letter to Mr. Short, dated July 11, 1951, a copy of which is submitted herewith and identified as Exhibit B.

The agreement effective September 1, 1949, is controlling.

POSITION OF EMPLOYEES: It is submitted that the claimant holding seniority as a machinist at Kansas City, Missouri, as of November 7, 1927, under the provisions of Rule 25 is entitled to all the conditions accruing to him under the terms of the contract and cannot be separated from his employment unless it is accomplished under the provisions of Rules 21 or 32 of that agreement and it is difficult to understand the reasoning of the carrier in policing the current agreement when they decline to restore to service the claimant who has the seniority rights to entitle him to a job and is physically qualified to perform the duties of a machinist. There is nothing contained in the settlement made between the carrier and the claimant submitted as Exhibit A, that would deprive the claimant of the benefits accruing to him under the terms of the current agreement, nor

employed in any capacity by this carrier. By reason of his name being continued on the roster as disabled, and because he was receiving an annuity under the Railroad Retirement Act, it was, therefore, possible for the carrier, under the laws and rulings of the Interstate Commerce Commission, to grant him certain pass privileges so long as there was no conflict with these laws and regulations.

9. There is in existence what is known as the Missouri Pacific Hospital Association, an employe organization, and employes who are not carried on the payroll in active service are permitted to retain their membership in the Association under certain regulations adopted by the Hospital Association, which the carrier understands to be that hospital membership may be continued so long as the former employe is extended certain pass privileges.

10. In November of 1950, this claimant, Harry E. Boyle, made a request that he be permitted to resume service with this carrier as a machinist, claiming that he had made a complete recovery from his injuries and was now able to carry on the duties as a machinist. His request was denied, and it was pointed out to him that a binding agreement had been made between the carrier and the claimant on June 20, 1950, to the effect that he would not thereafter be employed in any capacity. Subsequently the machinists' organization took up the request of the claimant and progressed it to the chief personnel officer, and the request was denied.

POSITION OF CARRIER: It is the position of the carrier that this subject should never have been progressed by the machinists' organization, either on the property or to your Board. It is clear that there was a binding agreement made between the carrier and the claimant, Harry E. Boyle, on June 20, 1950, to the effect that he would not thereafter be employed in any capacity by the carrier. (See carrier's Exhibit A). The agreement is so clear that it appears to the carrier that the organization should not now, by submitting this matter to your Board, cause needless expense to the Board and to the carrier.

As will be noted from carrier's Exhibit A, a very substantial sum was paid to the claimant. He alleged an injury to his back. He alleged there was negligence on the part of the carrier. He had then had an operation on his back. He was declared by his own physicians to be totally and permanently disabled. He made application and was granted an annuity by the Railroad Retirement Board on the allegation he was totally and permanently disabled. All these things were known to the carrier, and in the payment of so large a sum in settlement of his claim for damages the carrier was not at all unfair in insisting that the claimant agree in the settlement to not again be employed in any capacity by the carrier.

It is further the position of the carrier that carrier's Exhibit A constitutes a legal contract which is valid and binding between the parties to the contract and that your Board must recognize the existence of this contract and also recognize that the terms of this contract require that the request of the employes 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 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.

Claimant Harry Boyle, employed as a machinist by the carrier at the Kansas City Terminal on November 7, 1927, and promoted to a foremanship

on August 3, 1947, was injured by a fall at the Terminal on June 20, 1949. On June 20, 1950, Boyle having represented himself as permanently incapacitated, made an individual contract with the carrier under which, in consideration of the payment to him of \$16,350 he agreed that he would never again be employed by the carrier in any capacity.

Effective September 16, 1949, an annuity was granted to Boyle by the Railroad Retirement Board on the grounds of permanent total disability.

The carrier did not require that as part of the settlement of his claim for compensation for injury, Boyle's name be dropped from the seniority roster of machinists and foremen. His seniority status was maintained as that of a disabled or retired employe, and he continued to receive certain pass privileges.

In November, 1950, Boyle asked to be allowed to resume service with the carrier, having recovered from his injury.

This case confronts us with two related issues. First, is there any provision in the agreement between the carrier and the organization which was violated when the carrier arranged the settlement with Boyle and which should therefore move us to require the reinstatement of Boyle? Second, is the fact that the carrier permitted Boyle to retain his seniority status for certain purposes a controlling element?

We answer both questions in the negative. We find that, in consideration of the substantial sum of money he received, Boyle voluntarily agreed to forego service with the carrier. The fact that the carrier did not require him to relinquish his seniority rights for certain purposes, such as obtaining passes, cannot be held to imply that he continued to hold and exercise full seniority rights as if he were a full-fledged employe. By his voluntary agreement Boyle assented to the relinquishment of any seniority rights that he might have exercised as a non-disabled employe.

Under the law and under the parties' agreement Boyle was free to terminate his employment relationship with the carrier, with or without pecuniary consideration. He was also free to agree, for such consideration, never again to be employed by the carrier. His contract with the carrier was bilateral; his relinquishment of employment was not the result of arbitrary, unilateral decision by the carrier. We find nothing in the parties' agreement or in the Railway Labor Act that prohibits the making of the contract between Boyle and the carrier.

In view of these considerations we find that Boyle is estopped from obtaining employment with the carrier, and we find that a denial award is in order. To rule otherwise would be to penalize the carrier for having entered into a valid contract in good faith.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of November, 1952.