

Award No. 1822

Docket No. 1708

2-PRR-BK-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Blacksmiths)**

THE PENNSYLVANIA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Blacksmith J. A. Berkebile was wrongfully deprived of his employment rights on the dates of June 20, 23, 24, 25, 26, 27, 30, July 1, 2, and 3, 1952.

2. That accordingly the Carrier be ordered to make this employe whole at the rate of pay applicable to the class of work which he was entitled to perform on the aforesaid dates.

EMPLOYEES' STATEMENT OF FACTS: J. A. Berkebile, hereinafter referred to as the claimant, is employed by the carrier at its South Altoona Foundries, Pennsylvania, and established seniority rights in the classifications of and on the dates set forth below:

"Classification	Seniority Date
Laborer	March 3, 1926
Blacksmith Helper	May 5, 1942
Blacksmith	August 16, 1948"

The above seniority standing of the claimant has been jointly maintained by the parties and which is subject to be substantiated by the operation of the seniority rosters for individuals in the respective classifications at the time this dispute occurred.

The claimant was furloughed effective Thursday, June 5, 1952, but promptly thereafter the carrier elected to and did restore the claimant to his previous job effective Monday, June 9, 1952. As the result of this transaction, the claimant only lost one work day, Friday, June 6, 1952, however, the carrier again made the election, but on this occasion without proper notice, to furlough the claimant at the close of his assignment on Thursday, June 12, 1952. Notwithstanding the claimant thereupon applied to his foreman on Thursday, June 19, 1952, for the right to displace a junior man in the service within the scope of his long established seniority class but the carrier would not permit him to do so nor agree to pay him as though he was working in his seniority class which he chose to do in preference to being furloughed.

The agreement and the joint application thereof, amended as to rules effective April 1, 1952, is controlling.

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 was regularly assigned as a blacksmith in the Spring Shop, South Altoona Foundries Seniority District on June 5, 1952. On that day his position was abolished because of work shortage due to a nation-wide strike in the steel industry. There were no employes working in the Blacksmith Craft who were junior to him. He elected to accept a furlough instead of exercising his seniority as a laborer which he held under another agreement. On June 7, 1952, a number of employes including the claimant, were offered and accepted 4 days temporary employment in the Spring Shop. The temporary work ended on June 12, 1952. The Organization contends that claimant was entitled to 5 days to exercise his seniority as a laborer from the latter date under the provisions of Rule 3-D-4, current agreement.

The position of the carrier is the correct one. Claimant's position was abolished on June 5, 1952. He had five days in which to exercise seniority. He failed to do so and thereby lost any right to exercise his seniority under the agreement. Claimant was offered temporary work from June 9 to 13, 1952. He was not recalled as a furloughed employe to his old position because it had been abolished. The temporary work performed did not have the effect of extending the time in which he could exercise his seniority and displace a junior employe.

Claimant appears to have seniority rights as an assigned laborer by an agreement between the carrier and the United Railroad Workers of America, C. I. O. His rights under that agreement, if any, cannot be determined on a claim brought under the agreement made with the International Brotherhood of Blacksmiths, Drop Forgers and Helpers. He lost any right to displace under the latter agreement, if any such existed, when he failed to exercise such right within five days from the time his position was abolished.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of July, 1954.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1822

The majority erred in their findings when consideration was given to alleged practice rather than to the actual rules of the agreement. There is no rule in the agreement which permits the carrier to return employes to service on a so-called "temporary employment basis". The employe in question was first furloughed on June 5, but before the five-day limit expired or on June 7th, he was returned to service and when furloughed on June 12, 1952 should not have been denied the privilege of exercising labor seniority under the provisions of Rule 3-D-4. Admittedly the claimant possesses seniority rights as an assigned laborer by an agreement with the carrier and United Railroad Workers of America, C. I. O.

/s/ Charles E. Goodlin
R. W. Blake
T. E. Losey
Edward W. Wiesner
George Wright