

Award No. 1905

Docket No. 1765

2-MP-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

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

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman Helper H. M. Frevele was unjustly dismissed from the service on July 13, 1951, and that accordingly the Carrier be ordered to reinstate him with seniority unimpaired and compensated for all time lost retroactive to the aforementioned date.

EMPLOYEES' STATEMENT OF FACTS: H. M. Frevele, hereinafter referred to as the claimant, was employed by the Missouri Pacific Railroad Company, hereinafter referred to as the Carrier, on August 25, 1928, as a boilermaker helper at Coffeyville, Kansas.

Claimant was employed continuously as a boilermaker helper until laid off in a reduction in forces on May 3, 1951.

On June 21, 1951, claimant went to work in the car department of the carrier at Coffeyville, Kansas as a carman helper.

On July 13, 1951, force reduction Bulletin No. 4 was posted, advising the following employees:

"L. G. Jones	Seniority	7- 5-51
C. D. Wallace	Seniority	6-22-51
H. M. Frevele	Seniority	6-21-51"

that effective quitting time July 16, they would be laid off.

On the same day, July 13, 1951, that Bulletin No. 4 was posted, claimant was verbally notified by his foreman that he was disqualified as a carmen helper and he should not report for work the following day.

The dispute has been handled with the carrier up to and including the "highest officer so designated by the Carrier," with the result that he has declined to adjust it, which is affirmed by copy of letter dated July 1, 1952, submitted herewith and identified as Exhibit A.

There are numerous awards supporting the position this Division takes in this matter, and we can find none to the contrary. See Awards 3327, 6175, 9305, 5256, 6699, 10196, 11234, and 13126."

This claim for the reinstatement of H. M. Frevele should be denied for the reasons fully set forth in this submission, which may be briefly summarized as follows:

- "1. Claimant was not dismissed from the service, and continues to hold seniority rights as a Boilermaker Helper.
2. When he began working as a Carman Helper on June 21, 1951, he entered service as a new employe in that classification.
3. When he entered service as a Carman Helper on June 21, 1951, he became subject to Rule 38 of the Shop Crafts Agreement.
4. The Carrier disapproved claimant's application on the 23rd day—well within the thirty (30) day period allowed in Rule 38.
5. Although not required by Rule 38, Carrier informed claimant of the reason application was disapproved, that is, unable to perform the work of a Carman Helper.
6. Grievance and Discipline Rules 31 and 32 of the Shop Crafts Agreement not applicable in the instant case, because application disapproved within less than 30 days permitted by Rule 38.
7. Awards of this and other Divisions of the National Railroad Adjustment Board have always recognized Carrier's right under similar rules to disapprove applications for employment within time prescribed in such rules.
8. Right to disapprove Claimant's application within thirty (30) days provided in Rule 38 was not waived, although other conditions precedent to employment, such as age limit, physical and other standards, and written application were waived under the circumstances fully set forth in this submission."

Without waiving, in any way whatsoever, the facts, arguments and authorities set forth in this submission in support of the carrier's position in this dispute, in the event your Board should sustain the claim for reinstatement of claimant with compensation for any lost time which may be involved, we hereby request your Board to permit the deduction therefrom of any compensation received under the provisions of the Unemployment Compensation Act and any earnings received by claimant in other employment during the period involved.

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, a Boilermaker Helper at Coffeyville, Kansas, cut off in force reduction, on oral application was employed as a carman helper at Coffeyville. Twenty-three days later—on July 13, 1951—claimant was informed that his

employment was discontinued after that day because of his inability to perform the work. He claims that he was unjustly dismissed.

Carrier asserts that claimant had no bidding right as a carman helper and therefore was an applicant rather than a bidder for the position. It relies on Rule 38 which provides that applicants for employment shall fill out application blanks and that employment shall be considered temporary until the application has been approved or disapproved within thirty days, and asserts that thereunder claimant's application was disapproved.

Employees rely on asserted past practice and Rule 23 (a) which reads:

"While forces are reduced, if men are needed at any other point, such men as are laid off by reason of force reductions will be given preference to transfer with privilege of returning to home station when force is increased, such transfer to be made without expense to the company. Seniority to govern all cases."

We think that rule gives to an employee preference to transfer to another position within his craft at any other point, with privilege of returning to home station, rather than right to transfer to any other craft, at his home station.

Since claimant had no seniority or preference right to work as a carman helper, he must have been an applicant rather than a bidder and as such he had only the rights of an applicant under Rule 38. There would seem to be equal reason for testing one coming from another craft that there is for testing one coming from another employment.

Carrier waived the requirement of written application under Rule 38, but the provision that the employment thereunder shall be subject to disapproval is included in the rule as well as in the application and is independent of the application, and not waived with it.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 25th day of March, 1955.