

Award No. 1912
Docket No. 1749
2-UT-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:

THE UNION TERMINAL COMPANY

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

DISPUTE: CLAIM OF CARRIER: Restoration of Coach Cleaner James Pickle's name to the Seniority Roster of Coach Cleaners of The Union Terminal Company and pay for time loss that might accrue as result of his name being removed from the Coach Cleaners' current roster posted as of January 1, 1954. Coach Cleaner James Pickle was properly handled under the rules of the current agreement.

CARRIER'S STATEMENT OF FACTS: Coach cleaners of the Union Terminal Company are represented by the Brotherhood of Railway Carmen, System Federation No. 121, Railway Employees' Department, A. F. L. The current agreement in effect is dated March 1, 1938, made between The Union Terminal Company, Dallas, Texas, and its employees represented by System Federation No. 121, Railway Employees' Department of the American Federation of Labor, composed of International Association of Machinists; International Brotherhood of Boilermakers, Iron Ship Builders and Helpers of America; International Brotherhood of Electrical Workers; and Brotherhood of Railway Carmen. Copy of agreement is on file with the Board.

Coach Cleaner James Pickle was furloughed from the service of The Union Terminal Company account reduction in force on November 30, 1952, and on September 8, 1953, the carrier sent Pickle notice to return to work, by registered letter, return receipt requested, reading as follows:

"Mr. James Pickle
3830 Kynard Street
Dallas, Texas

Dear Sir:

Please accept this as notice that your services are required as Coach Cleaner, The Union Terminal Company, Dallas, Texas, in line with your seniority as Coach Cleaner.

telephone and later confirming such conversation by letter, Exhibit C. Carrier made no reply to that letter. Secondly, when the claimant and claimant's organization found that the claimant's name had been stricken from the roster, immediate steps were taken to handle this claim in accordance with Rule 16 (b), wherein it was claimed that the employe was being unjustly dealt with.

The agreement Rule 12 (c) reads as follows:

"(c) Twenty-four (24) hours notice will be given before hours are reduced. If force is to be reduced, seventy-two (72) hours notice will be given the men affected before reduction is made and list will be furnished the Local Committee. In the restoration of forces, senior laid-off men will be given preference in returning to service, if available, and return within fifteen (15) days, and shall be returned to their former position if possible."

The agreement does not provide for extra work or an extra board, and the rules are predicated on full time jobs. Therefore, the restoration to service of claimant in this instance, as per Exhibit B, was not intended to provide claimant with a full time job in accordance with the rules of the agreement; nor was there any restoration of forces contemplated within the terms and conditions of Rule 12 (c).

No basis in substance exists for the carrier's removal of claimant from the seniority roster inasmuch, as stated, there was no restoration of forces, the carrier failed to recognize by default a bonafide letter, Exhibit C, and further, misrepresented the facts surrounding the alleged vacancy in the coach cleaning department. Therefore, the Honorable Members of this Division are fully warranted in reversing the action of the carrier, and accordingly sustaining in its entirety the dispute in favor of the claimant, in accordance with Rule 16 (d) which reads as follows:

"(d) If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired and compensated for the wage loss, if any, resulting from said suspension or dismissal."

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 the dispute were given due notice of hearing thereon.

On September 8, 1953 Claimant Coach Cleaner long after being furloughed at Dallas on account of reduction in force was given notice, as senior laid-off man, to report for service within fifteen days or forfeit his seniority. The chairman of the Fort Worth Local Lodge, E. J. Jones, promptly called the general foreman in claimant's behalf by telephone, and learning that the vacancy for which claimant was called to report was a temporary vacancy, made protest against his being required to return therefor. The General Foreman advised him to make his protest in writing as required by the Grievance Rule, but whether any letter was written is a matter of dispute.

In any event no further action was taken by either side for approximately four months, when carrier compiled its seniority roster for coach cleaners for 1954 and deleted claimant's name therefrom.

Upon learning claimant's name had been dropped from the roster, Jones together with his General Chairman and the Vice President of the Brotherhood held conference with the General Foreman and the Vice President and General Manager of Carrier. A second conference was held some two weeks later. Thereafter Carrier's Vice President wrote the General Chairman declining the claim upon the grounds: first, that claimant had failed to make written claim, as advised to do, in September, within the time provided by the rule, and, if such letter had been written that subsequent delay from September to February in further pursuit of the claim was too long; second, that claimant's name was properly dropped from the seniority roster because of failure to report for service as required by the Reduction in Force Rule.

As to the first ground,—the claim here is not based on the September notice but on the January deletion of his name from the roster. The denial letter of Carrier's Vice President says: "This has reference to the two conferences held in my office . . . in connection with the removal of Coach Cleaner James Pickle from the 1954 seniority roster of coach cleaners." That claim was presented promptly after knowledge of the deletion. True it was not presented in writing, nor was the appeal. But when the Mechanical Foreman and Vice President entertained the claim and engaged in conference on the merits instead of referring claimant's representatives to the local foreman, they waived the requirements of the rule for progressing the claim from the lower officer. The consideration of the dispute in conference satisfied the requirements of the Railway Labor Act, as amended.

As to the merit of the claim, it is admitted that claimant was recalled to fill a temporary vacancy.

It has been held repeatedly by this Division that filling a temporary vacancy is not a restoration of forces. Award 1262. Such interpretation having been made against employes' interest, it should remain when to their benefit. In such case under the Reduction in Force Rule claimant was not required to return for the temporary vacancy and his name should be restored to the seniority roster. But also he is not entitled to notice under that rule and there is no showing of time loss in his behalf.

AWARD

Claim allowed as to restoration of name to seniority roster. Otherwise denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of March, 1955.