Award No. 1961
Docket No. 1780
2-AT&SF-CM-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Carmen)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (Eastern Lines)

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement the following Carman Helpers:

E. Howard	S. G. Ochoa	E. Gutierres, Jr.
Geo. Robinson	D. D. Ornelas	R. B. Alamilla
A. L. Morales	R. G. Loya	W. T. Rodgers
R. R. Mendoz	D. Valdez	J. Fernandez
S. M. Arellano	J. A. Ornelas	A. J. Baker
T. L. Banks	L. J. Hollis	W. F. Thompson, Jr.
J. T. Zaragosa	O. E. Rich	P. O. Briones
V. Lamas	I. A. Zamora	L. Braxton
P. G. Loya	D. T. Zaragoza	John Young
W. N. Scott	H. McDaniels	E. E. Davis
H. M. Aguilar	M. Pacheco	R. Becerra
M. W. Perez	F. R. Mardigal	N. Betts
		R. L. Joplin

were unjustly removed from the Carman Helpers' seniority roster and denied their seniority as such, starting with and subsequent to January 16, 1954.

2. That accordingly the Carrier be ordered to:

   a) Restore the aforesaid employes to their proper seniority standing on the Carman Helpers' seniority roster.

   b) Permit these Claimants to exercise their proper Carman Helpers' seniority over junior employes working in the classification of either Carman Helpers or Upgraded Carman Helpers.

c) Make these employes whole by compensating them at the applicable rate for the difference in rate received and rate entitled to receive or for any loss suffered by them retroactive to the date their names were removed from the Carman Helpers' roster and they were reduced.

EMPLOYES' STATEMENT OF FACTS: The employes whose names appear in the claim above, hereinafter referred to as the claimaints, were until and on the dates shown above, regularly employed, bulletined and assigned in the carrier's Argentine, Kansas car department with various assigned hours and work weeks, as carman helpers with seniority as such, with the exception of H. McDaniels and D. T. Zaragosa, who were working as upgraded carman helpers, performing car repair work and A. L. Morales, who was working as an upgraded carman helper, performing trainyard car inspector work.

These claimants have all established carman helper seniority in accordance with the current agreement and were placed on the carman helper seniority roster by the carrier at Argentine, Kansas, car department, each with a carman helper date as of the first day they performed carman helper work.

Starting on January 16, 1954, and on subsequent dates, these claimants were reduced from carman helpers with established seniority as carman helpers to shop laborers and had their carman helper seniority dates removed from the helper seniority roster and, at the same time, they permitted at least twenty (20) shop laborers to work as carman helpers, who never had or have they now established carman helper seniority.

The employes have made every known honorable attempt through correspondence and in conference with the supervision, from the lowest to the highest carrier officers authorized to settle such disputes on the property, with the result that they declined to grant any favorable consideration to the employes' request.

The agreement effective August 1, 1945, as subsequently amended, is controlling over this dispute.

POSITION OF EMPLOYES: The employes respectfully submit that each of these claimants established seniority as a carman helper and was placed on the carman helpers' seniority roster at the carrier's Argentine, Kansas, car department by the carrier. When these claimants were promoted from shop laborers to carman helpers, they were each called into the general car foreman's office and each signed a waiver waiving his laborer's seniority and establishing carman helper's seniority as of that same day. At the time these claimants signed the next above referred to waivers, they or their local chairman were not furnished copies of the signed waiver, as they were contractually entitled to. The employes' representatives since have made request upon the carrier for their record copies. However, the carrier has refused to furnish the long overdue waiver copies and all allegations of the carrier to the contrary are denied. However, the employes submit a partial copy of the 1953 revised carman craft seniority roster from Argentine, Kansas, identified as Exhibit A showing carman helpers' established seniority dates including a number of the claimants' dates, which claimants are identified by a star just in front of their names. The remaining claimants waived laborers' seniority and had seniority as carman helpers after the 1953 roster was posted, which is confirmed by Exhibit B, copy of which is submitted herewith.

Rule 28 (d) of the August 1, 1945 agreement reading:

"(d) The seniority of each employe shall start from the time he first performs actual service in the Craft or class in which employed with the Company as evidenced by clock or other

registration. The seniority of two or more employed at the same time in the same seniority district will be determined by the order in which the employment forms were filed."

Item 13 of Appendix B amended in Memorandum of Agreement No. 3 dated January 22, 1946, which became effective January 1, 1946 reading:

"Amending Item 13 of Appendix "B", the following is adopted to provide for the indefinite perpetuation of seniority previously acquired within a single Craft."

"An employe working as a machinist and retaining seniority acquired prior to August 1, 1945 in the machinist helpers' sub-division, in addition to seniority as boilermaker, boilermaker helper, blacksmith, blacksmith helper or any other craft or class or combination thereof, when affected by a seniority move, must exercise all his previously acquired seniority in the inverse order in which it was acquired or accept furlough as a machinist, in which event he would forfeit all seniority previously acquired in the sub-division thereof and at points or in districts. If exercising such previously acquired seniority and displacing on a machinist helper's position, later on a boilermaker's position and still later on a boilermaker helper's position, if accepting recall under Rule 24 as a machinist helper, he would forfeit seniority in the boilermakers' craft or failing to accept recall as machinist helper would forfeit seniority in machinist helper sub-division and stand subject to recall only as a machinist."

Memorandum of Agreement No. 4, dated December 18, 1950, effective December 16, 1950, Paragraphs (h) and (i) reading:

"(h) It is hereby further agreed to extend this Memorandum of Agreement to item 13 of the Shop Crafts General Agreement to provide that Coach cleaners and Laborers (common or classified) promoted to fill positions of helpers of the respective crafts at point employed will not estabish seniority as helpers but will retain and accumulate seniority, until they have acquired four (4) years of experience as helpers in the particular craft to which promoted (260 days of such service constitutes one year). Upon completion of four (4) years' service as a helper he shall elect to continue as helper with a date on the helpers' roster as of date first so assigned and forfeit all seniority previously acquired, or return to the Coach Cleaners or Laborers' classification and forego any claim to helpers' seniority by reason of having been promoted to such a position under the terms of this Memorandum of Agreement. An employe exercising the latter option shall be subject to the provisions of Rule 16 (d) of the Shop Crafts or Rule 21 (f) of the Firemen and Oilers' Agreements."

"(i) It is further understood that the provisions of this paragraph do not contemplate any change in the practice of selecting applicants for positions of helpers of the crafts and that its sole purpose is to preserve unimpaired the seniority rights of laborers and coach cleaners when selected to fill helpers' positions."

Mediation Agreement Case A-4061, signed June 4, 1953, effective June 1, 1953, Article III reading:

"Article III upgrading Carman Helpers and Apprentices

"In the event of not being able to employ carmen with four (4) years' experience who are of good moral character and habits regular and helper apprentices will be advanced to Carmen in accordance with their seniority. If more men are needed, helpers will be promoted. If this does not provide sufficient men to do the work,

The carrier's position is fully supported by the language of the rules involved, paragraphs (h) and (i) of Memorandum of Agreement No. 4.

Look at paragraph (h) for example. The meat of that paragraph insofar as the instant dispute is concerned is this:

> "It is . . . **agreed** . . . that . . . laborers promoted to . . . helpers . . . **will not establish seniority** but will retain and accumulate seniority, until they have acquired four years of experience as helpers in the particular craft to which promoted . . ." (Emphasis supplied)

Look at the next paragraph, paragraph (i) of Memorandum of Agreement No. 4. The meat of that paragraph insofar as the instant dispute is concerned is this:

> ". . . its (this paragraph) **sole purpose is to preserve unimpaired the seniority rights of laborers and coach cleaners when selected to fill helpers' positions.**" (Emphasis supplied)

These two quotations from Memorandum of Agreement No. 4 are not filled with ambiguity. They leave no doubt as to their meaning. Their lucidity is beyond question.

The position of the National Railroad Adjustment Board with respect to claims of this nature, that have absolutely no support in any agreement, is not cloaked in mystery nor is it susceptible to any doubt. Numerous awards bear out the principle so well stated in Third Division Award No. 6595 which contains the following:

> "We find no uncertainty or ambiguity in these Sections of the Agreement. They appear to be the product of close negotiation down to points of considerable detail. To interject our notions of what is practical or reasonable would involve torturing plain language and interfering with the understandings of the parties as reduced in writing."

The Board has consistently held that the burden is upon the employes to show that the carrier has misapplied the agreement. The organization has made no attempt in the instant dispute to assume its proper burden. In Second Division Award No. 1655 there is found in the "Findings" of the Board this statement:

> ". . . The burden is upon the employes to show that the Carrier misapplied the agreement . . ."

See also the "Findings" in Award Nos. 1595, 1599, 1608, 1609, 1610, 1611, 1613, 1614, 1615, 1616, 1644, 1645, 1646, 1647, 1648, 1649, 1650, 1651, 1652, 1653, 1654, all of which are Santa Fe awards, applying to one or the other of the four grand divisions of this carrier. These awards reflect the failure of the organization in the past to assume its proper burden of supplying proof, just as it is now doing in the instant dispute.

In conclusion, the carrier would point out that, **the Board is limited in its consideration of this dispute, to the interpretation and application of agreements as agreed to between the parties, without authority to add to, take from, or write rules for the parties.** See Third Division Award No. 5079 and numerous others.

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.

This submission concerns thirty-seven (37) employes at carrier's Argentine, Kansas, car department. They allege that their election to waive their laborers' seniority and accept carmen helpers' seniority was done when called into the General Car Foreman's office to consider the matter. Names of certain of the claimants appeared upon the carmen's seniority roster of January 1, 1953.

As the identical issue is presented and considered at length in companion docket 1779, subject of Award No. 1960 decided this date, we adopt the opinion accompanying said award by reference.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.