

Award No. 1962
Docket No. 1789
2-AT&SF-SM-'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. (Sheet Metal Workers)**

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

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement the Carrier improperly furloughed Sheet Metal Worker Helper Marvin C. Clem from his assigned position as Water Service Helper at Argentine, Kansas on January 30, 1954.

2. That accordingly the Carrier be ordered to:
 - a) Reinstatement the aforesaid employee to service as a Water Service Helper with all seniority rights on the January 1, 1953 roster unimpaired.
 - b) Compensate him for all compensation lost as a result of this violation.

EMPLOYEES' STATEMENT OF FACTS: Mr. Marvin C. Clem, hereinafter referred to as the claimant, was employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, at Argentine, Kansas as an engine washer on date of August 15, 1952. On August 25, 1952 he was promoted to water service helper. Claimant was notified by his supervisor in the water service department that if he would sign a waiver waiving his rights under the provisions of Memorandum of Agreement No. 4, he would be immediately assigned to the regular water service helpers' seniority roster. Claimant signed this waiver and his supervisor took possession of it. On the seniority roster for the year 1953, copy submitted herewith and identified as Exhibit A, claimant was carried as a regular water service helper with a seniority date of August 25, 1952.

The carrier revised the water service helpers' seniority roster in January, 1954, copy submitted herewith and identified as Exhibit B. In the seniority roster revision, claimant was removed from the regular water service helpers' seniority roster and placed on a separate seniority roster, copy submitted herewith and identified as Exhibit C.

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 employees 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 employees 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Claimant was initially employed at Argentine, Kansas, as an engine washer (laborer). Ten days later on August 25, 1952, he was upgraded to a helper's job and following his supervisor's explanation of the operation of the upgrading plan, he elected to relinquish his laborer's seniority and his name thereafter appeared on the helpers' roster of January, 1953, carrying dates of August 25, 1952. In the revised helpers' roster of January, 1954, his name was removed from the regular seniority roster and carried on a separate seniority roster under the heading "Coach Cleaners and Laborers working as Water Service Helpers without Seniority Dates under the Provisions of Memorandum of Agreement No. 4." On January 30, 1954, a returnee from military service displaced claimant. He was thereafter not allowed to displace a helper who was employed after his assignment to the helper's position.

As the identical issue is presented and considered at length in companion Docket 1779, decided this date and subject of Award 1960 we adopt the opinion accompanying said Award by reference.

AWARD

Claim 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.