

Award No. 2068

Docket No. 1967

2-GN-FO-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Coal and Ash Man Clayton Andrews was denied the right to exercise seniority to position of Power Plant Helper from July 13, 1954 through December 8, 1954, which position was established and bulletined while he was serving in the military forces.

2. That accordingly the Carrier be ordered to compensate the aforesaid employe at the applicable rate of pay for Power Plant Helper during the aforementioned period.

EMPLOYEES' STATEMENT OF FACTS: Clayton Andrews, hereinafter referred to as the claimant, was first employed by the carrier on November 7, 1949 as a laborer at the Superior, Wisconsin shops. On March 8, 1950, he was promoted to coal and ash man in the carrier's power plant, which is operated in connection with the shops. The claimant entered military service on July 8, 1950, and was discharged July 7, 1954.

While claimant was in military service, the plant was converted from coal-fired to oil-fired operation, and the position of coal and ash man abolished. At the same time the position of power plant helper was established and bulletined as such, with the successful bidder being Anthony Anecki, which is confirmed by statement of Anecki submitted herewith and identified as Exhibit A, who was given a power plant helper date as of January 9, 1953. Mr. Anecki has a laborer's date in the shops of July 29, 1950 and coal and ash man July 30, 1950.

Upon Mr. Andrews' discharge from military service, he made both written and oral application for the position of power plant helper to Shop Superintendent H. Coleman under date of July 12, 1954. However, he was not placed on the position of power plant helper until December 9, 1954.

This Board repeatedly has acknowledged its lack of jurisdiction in such matters. For instance, in Award 8832 of the First Division, the Board stated:

"The Division does not have jurisdiction over the application of the New York full crew law."

and again in Award 5324 of the Third Division it is held:

"It is of no concern to this Board in what manner the Courts of our land and various divers governmental agencies construe and interpret statutes. Likewise, it is indisputable this Board possesses the sole authority to construe and interpret the schedule here involved."

Therefore, we hold that in this case the attention of your Board must be confined to the rules of the agreement between the parties hereto. As we have clearly shown, the pertinent rule relative to power plant helpers has not been violated inasmuch as positions of power plant helpers are selective, rather than being subject to seniority.

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 this dispute were given due notice of hearing thereon.

The claimant held the position of coal and ash man in the carrier's power plant at the time he entered military service in July, 1950. While the claimant was in the service of his country, his old position was abolished due to the fact that the power plant was converted from coal fired to an oil fired operation. One Anthony Anecki, who was junior to the claimant, bid in the new position of power plant helper in January, 1953.

Claimant was discharged from military service July 7, 1954. On July 12, 1954, claimant made request that he be given the position of power plant helper which had been advertised and filled while he was on military leave of absence.

Claimant was not allowed to displace Mr. Anecki until December 9, 1954, and was not allowed compensation in any amount for the period from July 13, 1954 through December 8, 1954.

This claim should be sustained for an amount equaling that which claimant would have earned as a power plant helper from July 13, 1954 through December 8, 1954, had he been allowed to displace Mr. Anecki on July 13, 1954. Any outside earnings realized by the claimant during the period in question should be taken into consideration and an amount equal to said outside earnings should be deducted from the amount he would have earned as a helper.

The reasons for our decision are as follows:

The claimant was away on a bona fide leave of absence and was entitled to return to the employment of the carrier. Rule 15(e) of the current agreement between the carrier and the organization provides that employes returning to service from leave of absence shall be entitled to bid on new jobs created during their absence. The job in question was, in fact, ad-

vertised during claimant's absence while on authorized leave. The carrier treated the job as a bidable position. Claimant met the qualification requirements of the position and was senior to the employee awarded the job.

Considering all the facts of this particular case we are of the opinion that the claim has merit and claimant is entitled to be compensated in the manner above indicated.

AWARD

Claim sustained as per Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1956.