

Award No. 2256

Docket No. 2238

2-UP-SM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement, Mr. Sidney T. Connick, Sheet Metal Worker, Water Service Helper, Green River, Wyoming was unjustly dealt with when he was deprived of his service rights on and subsequent to, June 8, 1950.

2. That accordingly the Carrier be ordered to:

a) Refrain from this type of discrimination in this particular department where it is so prevalent.

b) Allow this employe credit for vacation as though he had been recalled in his turn.

c) Compensate this employe in the amount of the difference between what he received as helper and laborer and what men junior to him have received since the aforementioned date who have been promoted to journeymen.

EMPLOYEES' STATEMENT OF FACTS: Mr. Sidney T. Connick, hereinafter referred to as the claimant was employed by the carrier at Green River, Wyoming, May 9, 1949 as a laborer in the maintenance of way department. On July 16, 1949, he was employed as a sheet metal worker helper, water service, in the engineering department of the carrier. On February 3, 1950 he was furloughed account of force reduction, and was never recalled, although the same department began employing helpers on his seniority division June 8, 1950. Some of whom have since been promoted to journeymen, and paid as such.

In this department no provisions are made for training journeymen, such as an apprenticeship and helpers are advanced according to their seniority.

The grievance presented, even if proper (which the carrier denies), does not support or offer any basis for the particular relief claimed. All that it would support under these circumstances, if it were proper (which the carrier denies,) is a request for present reinstatement to the maintenance of way department. This particular request is noticeably absent from the claim. Thus, even if the grievance were sustained, there is no request for the grant of any relief which could properly be allowed upon the basis of the alleged grievance presented.

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 was employed by the carrier at Green River, Wyoming, as a sheet metal worker helper, Water Service. On February 3, 1950, he was furloughed on account of force reduction. He was never recalled although employes junior to him were returned to service as early as June 8, 1950. He claims wage losses resulting since the latter date.

Carrier contends that the claim is barred by Rule 35 of the agreement which requires that claims for agreement violations shall be made within ten (10) days. (The record shows that carrier did not raise this question on the property. It was raised for the first time before this Board. This constitutes a waiver of the time limit, otherwise it would constitute a departure from the issues raised on the property.)

After claimant was laid off in force reduction in the maintenance of way department on February 3, 1950, he evidently failed to file his address so that he could be located in case of a recall to service. On April 11, 1950, claimant entered the service of the mechanical department. There is evidence that he was contacted about returning to the maintenance of way department and that he stated that he preferred to remain with the mechanical department. Claimant has remained with the mechanical department as a sheet metal worker during all the time herein mentioned and is presently so employed so far as the record shows.

On March 18, 1954, a claim was filed for the difference in the wages claimant actually received as a laborer and helper, and what he would have received as a "set-up mechanic" had he been called back in his turn.

The record shows that the maintenance of way department dropped claimant's name from its roster in 1951. Claimant appears to have lodged no objection. He waited almost four (4) years before he ever made a claim that he had been improperly treated. Claimant does not dispute the statement of the water service foreman in the maintenance of way department that he was contacted about returning to work and that he stated he desired to remain with the mechanical department. It will be noted that in his claim here made that he does not seek to be reinstated in the maintenance of way department. The foregoing facts give credence to the statement of the carrier that the dispute actually arose over claimant being allowed one week's vacation in 1954 when he thought he should have been given two weeks. This is further borne out by claimant's offer to settle the whole matter for the equivalent of one week's vacation. The record also shows that when it was shown that claimant had not met the requirements to obtain a two weeks' vacation in 1954, even after crediting his time worked in the maintenance of way department, the general chairman receded from his position on that point and continued to progress the claim in its present form. Thus it

appears that the claim would have been promptly handled within time limits if the issue was the amount of vacation in 1954, but with that issue removed from the dispute, the remaining items appear to be stale claims which claimant had long acquiesced in without any intention of pressing. We think a consideration of the whole record leads to the conclusion that claimant did not and does not now desire to be recalled to the maintenance of way department. In any event, the organization has not established by the required quantum of proof that claimant was discriminated against or that he has a valid claim for wage loss. There is not, therefore, any basis for an affirmative award.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.