

Award No. 2259
Docket No. 2281
2-UP-SMW-'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, Marriner C. Rigby, Sheet Metal Worker, Water Service Helper, of Salt Lake City, Utah, was unjustly dealt with when the Carrier failed to recall him from furlough in his proper turn.
2. That accordingly the Carrier be ordered to:
 - (a) Re-imburse this employe for all time lost.
 - (b) Give him credit for his vacation rights as though he had been recalled in his proper turn.

EMPLOYEES' STATEMENT OF FACTS: Marriner C. Rigby, hereinafter referred to as the claimant, was employed by the carrier as a sheet metal worker helper, April 30, 1951, in the water service branch of the engineering department. He was honorably discharged from the Navy, February 6, 1954, where he had served 22 months doing sheet metal and pipe work.

In this department no apprentices are employed, nor do they have a regular apprentice training, as provided for in controlling agreement. However, helpers are promoted in seniority order and when they have completed four years combined service as helper and advanced helper, they are accorded a journeyman's date.

The claimant returned to his helper's job on February 14, 1954, and was furloughed April 9, 1954 and was recalled to service, promoted to mechanic September 14, 1954, after several helpers junior to him had been recalled and advanced to temporary Journeymen.

On July 13, Wm. A. O'Reilly, who had entered service as a sheet metal worker water service helper 4-11-52, was recalled and promoted to a mechanic 7-13-54. Robert E. McLane, who entered service as helper 1-28-52, and who

In the restoration of forces, senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former positions if possible, regular hours to be reestablished prior to any additional increase in force.

The local committee will be furnished a list of men to be restored to service. In the reduction of the force the ratio of apprentices shall be maintained."

Rule 27, which refers to reduction and restoration of forces, is not applicable to this claim. The claimant herein had seniority only as a sheet metal worker helper, and there was no restoration of helper forces during the period in question. The employes from this district who were called back to service during this period were not called back as sheet metal worker helpers, but rather had "set-up" to mechanics by agreement with the local chairman of the organization and were recalled in the capacity of "set-up mechanics". The employes, comprising Water Service Gang 1252 which were used from another seniority district were likewise not used as helpers. All of the men on that gang were either full fledged mechanics or "set-up mechanics" and were needed and used only in that capacity.

Although ostensibly premised upon Rule 27, the organization's objections to the manner of handling in this case seems to be directed at the fact that some employes, junior to the claimant as helpers, were "set-up" as mechanics prior to the time he was "set-up". The agreement of March 23, 1944, while recognizing and providing that employes holding seniority as a sheet metal worker helper might be promoted or "set-up" to sheet metal worker with less than the required four years experience without establishing seniority as such until they have four years combined service as sheet metal worker and helper, does not require that helpers be "set-up" to sheet metal worker (mechanic) in seniority order. Rather it has been the established practice in the water service of the maintenance of way department in selecting helpers to be "set-up" to sheet metal worker (mechanic), for such selection to be made by agreement between the foreman and the organization's local chairman without regard to seniority or length of service.

There was no restoration of forces in the helper classification during the time the claimant was furloughed. The only vacancies existing at that time were for sheet metal worker (mechanics), and the only employes recalled to service were those who either had that seniority or who had been "set-up" to work as mechanics by agreement with the local chairman in accordance with the established practice. The claimant had no seniority as a sheet metal worker (mechanic) and, during the period in which he was furloughed, had not been "set-up" to work as a mechanic. The claimant, with seniority only as a helper, had no claim to vacancies for mechanics, and no proper basis to object if, by agreement with the local chairman of the organization, other helpers were promoted to the status of "set-up mechanic" prior to him.

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 as a sheet metal worker helper in the Water Service branch of the Engineering Department. He was furloughed on April 9, 1954. He was upgraded to "set-up mechanic" and recalled to service on September 14, 1954. Several helpers junior to him were promoted

to "set-up mechanic" and recalled to service prior to his being recalled. He contends that this is a violation of the agreement and demands that he be compensated.

This dispute grows out of the construction of a new Diesel shop at Salt Lake City, Utah. The factual situation which developed is set out in Award 2258 and we shall not restate it here except to the extent necessary.

Salt Lake City is in the Sandy to Silver Bow seniority district. Carrier with the consent and approval of the local chairman of the organization promoted several helpers junior to claimant as "set-up mechanics" under a practice in existence on this property. We held in effect in Award 2258 that this was not a violation of the agreement as such promotions can be made on the basis of ability and without regard to seniority or length of service. Such is the practice amply shown by the record since the Special Agreement of March 23, 1944, was negotiated. It is not in violation of the agreement.

The agreement of March 23, 1944, was entered into, however, as a means of eliminating overtime when the roster of sheet metal workers was exhausted. Its purpose was to promote sheet metal workers' helpers who had not qualified as mechanics without their attaining any seniority to perform such upgraded work. The rule does not contemplate the promotion of helpers in one seniority district to be used in another, particularly when there are helpers who can be promoted in the other district.

In the case before us, "set-up mechanics" were brought from the Sandy to Los Angeles seniority district prior to the time claimant was promoted. On September 14, 1954, claimant was found qualified and promoted to "set-up mechanic." Claimant was entitled to work as a "set-up mechanic" before any "set-up mechanics" from the Sandy to Los Angeles district could be used. The controlling rule is: When carrier elects to use employes of a certain class it must use such employes within the seniority district where the work is to be performed before calling those from another seniority district.

Claimant was qualified as a "set-up mechanic" as is evidenced by the fact that he was promoted to such status on September 14, 1954. He was entitled to be used ahead of "set-up mechanics" from another seniority district. To this extent, the claim must be sustained.

AWARD

Claim sustained.

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.