Award No. 2303
Docket No. 2276
2-AT&SF-MA-'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. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Machinists)

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

DISPUTE: CLAIM OF EMPLOYES:

1. That under the controlling agreements, the Carrier improperly denied Machinist Helper E. F. Davidson opportunity to work on his regularly assigned position a period of three working days following notification of his furlough in force reduction.

2. That under the controlling agreements, the Carrier improperly denied Machinist Helper R. J. Russell opportunity to work on his regularly assigned position a period of three working days following notification of his furlough in force reduction.

3. That, accordingly, the Carrier be ordered to properly apply the pertinent portions of the agreement and compensate the above-named Machinist Helper's sixteen (16) hours' additional compensation at pro-rata rate.

EMPLOYES' STATEMENT OF FACTS: E. F. Davidson and R. J. Russell, hereinafter referred to as the claimants, were employed by the Atchinson, Topeka and Santa Fe Railway System, hereinafter referred to as the carrier, as machinist helpers at the carrier's Waynoka, Oklahoma Roundhouse.

On Monday, August 15, 1955, carrier posted bulletin notifying Claimant Davidson, having a third shift assignment with a work week of Wednesday through Friday, that he would be furloughed as machinist helper effective close of his shift Friday, August 19, 1955.

Claimant Davidson was off duty on his rgeularly assigned rest days Monday and Tuesday, August 15 and 16, returned to duty Wednesday, August 17, was permitted to work his regular assignment that day, then was reverted to position as laborer under different agreement by the media of the carrier electing that he could be displaced by other employe.

2. The three day notice provisions of Rule 24 (b) are not restricted or limited to three working days on the same shift, nor to three working days on the same position.

3. Carrier asserts R. J. Russell was given three working days' notice that he would be laid off in force reduction. He was so notified August 15 and worked August 15, 16, 17 and 18 and, had he chosen to displace junior Machinist Helper W. O. Haltom which he had every right to do under Rule 41, he would have worked two additional days, which would have accorded him five working days' notice instead of three working days provided for by Rule 24(b)."

Carrier respectfully asserts that the employes' claim is not supported by any rule in the controlling agreement.

Both Davidson and Russell worked three days before Russell was laid off and, of course, Davidson was not laid off. All the agreement provides is that employes be not laid off without three working days' notice. They therefore suffered no loss of pay and claim for 16 hours pay is ludicrous and should be denied.

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 Russell was a Machinists Helper at Waynoka, Oklahoma roundhouse, assigned 7:00 A. M. to 3:00 P. M., Saturday through Wednesday, with Thursday and Friday as rest days. Claimant Davidson was a laborer working as a machinist helper without seniority as such, assigned at the same point 11:00 P. M. to 7:00 A. M., Wednesday through Sunday, with Monday and Tuesday as rest days. On Monday, August 15, 1955, Carrier posted a bulletin notifying Davidson that he would be furloughed as of close of shift on Friday, August 19, 1955. On August 15, 1955, Carrier posted a second bulletin notifying Machinist F. O. Brown that he would be furloughed at the close of his shift on August 18, 1955, and that claimant Russell, as the junior man on the roster, would be cut off after all displacements had been made. It is contended that Carrier violated Rule 24 (b) of the current agreement, which provides:

"Three working days' notice will be given by bulletin to the employes to be laid off and list will be furnished the Local Committee."

Claimant Davidson was entitled to work on Wednesday, August 17, Thursday, August 18, and Friday, August 19. He worked on August 17 and then was displaced by Russell. He then exercised his seniority as a laborer, a position within the scope of a different agreement.

The record shows that claimant Russell would have been entitled to work on Tuesday, August 16, Wednesday, August 17, and Saturday, August 20. He worked his regular shift on August 16 and 17, and worked claimant Davidson's position on August 18.

We shall deal first with the claim of Davidson. Davidson was given a notice of three working days, to-wit, August 17, 18 and 19. He worked on August 17 and was then displaced by Russell. As we shall show in the discussion of Russell's claim, this displacement was not in accordance with the

rules. Davidson being entitled to three work days' notice under the Machinists Agreement, he was wrongfully deprived of work under that agreement on August 18 and 19. The claim of Davidson is sustained for those days.

As to the claimant Russell, he was given three working days' notice, to-wit, August 16, 17 and 20. He worked August 16 and 17, and displaced Davidson on August 18. His right to displace Davidson is based on Rule 41, current agreement, which provides:

> "The indiscriminate exercise of seniority to displace junior employes, which practice is usually called 'rolling' or 'bumping', will not be permitted. However, an employe whose job is abolished, or who may be displaced from his position by other causes, will be permitted to exercise seniority on any job occupied by a junior employe on his seniority list."

The claimed right of Russell to displace Davidson under this rule is that his job was abolished within the meaning of the second sentence of the rule. We submit that it was not. His job was abolished at the close of his shift on Saturday, August 20. His job had not been abolished when he was permitted to displace Davidson on August 18. The displacement of Davidson was, therefore, wrongful and within the prohibition of the first sentence of Rule 41.

The record shows that Russell worked as a Machinist Helper on August 16, 17 and 18. He worked on August 18 as a result of his displacement of Davidson on the latter's position on that date. He, therefore, worked three days after the notice was given. He worked August 18 instead of August 20 because of his own action in displacing Davidson. He may not assert his own wrongful displacement of Davidson as a basis for a claim against the Carrier. He received three days' pay as a Machinist Helper and that is all the agreement gives him under the circumstances shown.

We conclude, for the reasons stated, that the claim of Davidson is valid and that the claim of Russell should be denied.

AWARD

Claim 1 sustained.

Claim 2 denied.

Claim 3 sustained as to Davidson and denied as to Russell.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.