Award No. 3597

Docket No. 3448

2-CUT-SM-'60

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 150, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O.
(Sheet Metal Workers)

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current and controlling Agreements, The Cincinnati Union Terminal Company unrightfully and unjustly furloughed Upgraded Sheet Metal Worker Helper J. H. Williams at end of tour of duty March 31, 1958, also violated the February 4, 1953 Promotional Agreement.

That accordingly the Carrier be ordered to:

1. Compensate Upgraded Sheet Metal Worker Helper J. H. Williams twenty six (26) days pay at pro-rata rate of pay in compliance with the language in the Promotional Agreement of February 4, 1953.

2. Compensate Upgraded Sheet Metal Worker Helper J. H. Williams thereafter, for eight (8) hours pay at the rate of pay for such days J. H. Williams was deprived to work.

EMPLOYES' STATEMENT OF FACTS: The Cincinnati Union Terminal Company hereinafter referred to as the carrier and System Federation No. 150, negotiated and signed an agreement for advancing apprentices, helper apprentices and helpers to positions of mechanic's rate with effective date of May 19, 1942.

Four years later the carrier and System Federation No. 150 negotiated and signed an agreement to effect seniority for helpers who were promoted to positions of mechanic's rate with effective date of December 1, 1946.

Under date of November 12, 1951, the sheet metal worker's organization terminated the two above agreements. The carrier acknowledged the termination notice on November 14, 1951.

Under date of February 4, 1953, the carrier and System Federation No. 150 negotiated and signed an agreement for the sheet metal workers' craft to advance apprentices, helper apprentices and helpers to mechanic's rate.

working days. The agreement says 60 days and carrier contends this means calendar days.

Paragraph 16 states in part "—and is without prejudice to the usual rules or established practices." Consequently, the rules of the agreement apply to the return of an employe from leave of absence. Claimant Williams was displaced by the return of another mechanic from leave of absence and having no position he was furloughed.

The 60 day clause was placed in the agreement to prevent the carrier from putting on a position for less than 60 days. Claimant Williams was not furloughed by the carrier but was furloughed under the working of the rules agreement—see Rule 15 (b) and 20 (c) of the agreement on file with the Second Division. The 60 day clause certainly was not placed in the agreement to cause the carrier to retain a promoted man for the full 60 day period when the rules of the agreement caused him to be furloughed. If this were so, the carrier would have to deny the employe on leave his right to return to work until the 60 day period had been fulfilled.

Carrier contends the 60 day clause in the promotional agreement has no effect when an employe who had been off on leave returns to duty under the rules agreement and the working of those rules cause the junior employe to be furloughed.

FINDINGS: The Second Division of the Adjustment Board, based 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.

Parties to said dispute were given due notice of hearing thereon.

The Memorandum of Agreement of February 4, 1953 provided in paragraph 6 in part: "Under no conditions will an apprentice or a helper be promotted for less than 60 days." The agreement does not indicate whether this refers to work days or calendar days. The intent of the contracting parties is indicated however by employes' exhibits L, 1, 2, and 3. These exhibits are persuasive in that the carrier provided 60 work days for the promoted helpers prior to reducing them to the classification of helpers.

Upgraded Sheet Metal Worker Helper J. H. Williams should be compensated for 26 days at pro rata rate in compliance with the Promotional Agreement of February 4, 1953.

Since C. C. Daniels was properly placed on the helper's seniority roster, See Award No. 3596, Williams was not deprived of work when the carrier refused him the right to displace Daniels.

AWARD

Part 1 of claim sustained.

Part 2 of claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1960.