

Award No. 3598

Docket No. 3450

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 EMPLOYEES'
DEPARTMENT, A.F. of L.—C.I.O.—(Sheet Metal Workers)**

THE CINCINNATI UNION TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the current and controlling Agreements, the Cincinnati Union Terminal Company unrightfully and unjustly furloughed Upgraded Sheet Metal Worker Helper A. T. Carroll effective end of tour of duty March 29, 1958, and also violated the February 4, 1953 Promotional Agreement.

That accordingly the Carrier be ordered to:

1. Compensate Upgraded Sheet Metal Worker Helper A. T. Carroll thirty six (36) 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 A. T. Carroll, thereafter for eight (8) hours pay at the rate of pay for such days A. T. Carroll was deprived to work.

EMPLOYEES' 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 workers' organization terminated the two above agreements. The carrier acknowledged the termination notice under date of 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.

and was upgraded for a total of 84 days, which is in excess of the 60 day clause in the agreement. Claimant was furloughed January 29, 1958 as a promoted pipefitter and was again reinstated February 26, 1958 as a pipefitter and the 60 day clause cannot again apply as claimant had never been set back as a helper, consequently there was no promotion when he was reinstated February 26, 1958.

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 carrier contended that Claimant Carroll was promoted November 7, 1957 and furloughed as a promoted helper (mechanic) on January 29, 1958. He was reinstated on February 26, 1958 and worked to March 29, 1958 or twenty-four working days as a promoted helper (mechanic). Since Carroll was not demoted the carrier was in compliance with paragraph 6 of the Memorandum of Agreement of February 4, 1953.

It is true that the carrier reduced its helper positions on February 8, 1958, in effect abolishing all helper positions on claimant's seniority roster. Those helpers qualified under the 1953 memorandum were advanced by agreement with the organization to positions of mechanics. Two new mechanic vacancies were announced to the helpers and apprentices (see employes Exhibit G) and three new positions were bulletined on February 8, 1958 (see employes Exhibit H) to allow for the promoted helpers and for Claimant Carroll (mechanic).

The organization regarded this procedure as an evasion of the rules.

The organizations' position has merit. The carrier on January 29, 1958 demoted Vance, a man senior to Carroll, to the position of helper. It was not permissible under prevailing rules and practices to demote Vance while retaining Carroll as a mechanic. Hence, Carroll should have been demoted and as the junior helper he would have been furloughed in the same manner as Harrison (see employes Exhibit 3).

Therefore, in accordance with Award No. 3597 carrier was in violation of paragraph 6 of the 1953 memorandum.

Since Daniels was senior to Carroll, Carroll suffered no loss of work as a consequence of Daniels exercising his seniority for position temporarily held by Carroll on March 29, 1958.

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.