

Award No. 3737
Docket No. 3590
2-L&N-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

LOUISVILLE & NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1—That under the terms of the current agreement the rights of furloughed Carman John E. Churchman were violated when the Carrier used a junior employe to fill a temporary vacancy and

2—That accordingly the Carrier be ordered to additionally compensate Carman Churchman for all time worked by the junior employe.

EMPLOYEES' STATEMENT OF FACTS: On August 14, 1958 furloughed Carman Buell Noffsinger made application for employment under the provisions of the agreement of May 20, 1955, section 4 thereof. On August 25, 1958, Carman John E. Churchman, hereinafter referred to as the claimant, made application for work under the same agreement.

Carman John E. Churchman holds seniority as carman (coach carpenter) in Passenger Car Shop No. 9, at the carrier's South Louisville Shops, Louisville, Ky., with a seniority dating of 4-28-47. Buell Noffsinger holds seniority as carman (coach carpenter) in Passenger Car Shop No. 9, with a seniority dating of 8-16-52.

Both employes hold seniority in the freight car department, also, both are furloughed at each location. The seniority districts of the freight car department, (Shops 13 and 14) and the passenger car department (Shop 9) are separate and distinct but in both departments the mechanics are recognized as carmen in conformity with Rule 29 of the agreement.

On Tuesday, September 9, 1958, a temporary vacancy of carman (coach carpenter) W. L. Thomas, existed in Passenger Car Shop No. 9, South Louisville Shops. The junior furloughed carman, Buell Noffsinger, was called by the local officials and used to fill this temporary vacancy, notwithstanding the claimant, who is senior to the employe used, had made application, was available, and willing to work, and had furnished the carrier officials with necessary information to contact him.

"At South Louisville Shops the Air Brake Room, Coach Carpenters, Painters, Tank Shop No. 12, Planing Mill, Cabinet Shop and Plating Shop; and Louisville Terminal Car Department, Roundhouse and Union Passenger Station seniority rosters will be maintained separately as heretofore." (Emphasis ours.)

From the foregoing it can be noted that so far as seniority may be concerned the coach carpenter department and the freight carman department were two separate and distinct departments. As a matter of fact, insofar as seniority is concerned the two departments could have been located several hundred miles apart.

Attached hereto is copy of Mr. Churchman's application for extra work. It is clearly evident that Mr. Churchman was well aware of the distinction as between coach carpenter (Shop No. 9) and freight carman (Shops 13 and 14) for he furnished his seniority dating in each of the two departments. It is further evident that Mr. Churchman expressed a desire to protect only extra work as carman.

The employes now desire to have this Board penalize carrier to the extent that it used others to protect extra work as coach carpenter. On what basis employes rely is not known to carrier. Certainly, it is not the Board's function to say to carrier that Mr. Churchman desired to protect extra work both as coach carpenter and carman. Even Mr. Churchman did not express the desire to do this, although he had ample opportunity to do so. Had Mr. Churchman been furloughed as a coach carpenter at South Louisville, Kentucky, and later furloughed as carman at Birmingham, Alabama, 300 miles away, would carrier be expected to call him for both services? Clearly, the answer is "No." The fact that both seniority districts were located within the same shop area has no weight in the case. Mr. Churchman applied for extra work as carman and was used as such. Therefore, there is no merit to the claim of the employes and it 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.

Parties to said dispute waived right of appearance at hearing thereon.

Carman John E. Churchman holds seniority as Carman (Coach Carpenter), in Passenger Car Shop 9 at South Louisville Shop, with a seniority dating April 28, 1947. Buell Noffsinger holds seniority as Carman (Coach Carpenter) in Passenger Car Shop 9, with a seniority dating of August 16, 1952.

Both employes hold seniority in the Freight Car Department, both are furloughed at each location. The seniority districts of the Freight Car Department (Shops 13 and 14) and the Passenger Car Department (Shop 9) are separate and distinct but in both departments the mechanics are recognized as carmen, in conformity with Rule 29 of the agreement.

On September 9, 1958, a temporary vacancy of Carman (Coach Carpenter) existed in Passenger Car Shop 9 South Louisville Shop, and a junior furloughed Carman Buell Noffsinger was called by the Carrier, to fill this temporary vacancy.

The claimant was entitled to work from the furloughed list beginning at 7 A. M. on September 9, 1958, because he was the senior furloughed employe and had made application prior to the vacancy and should have been used in his seniority order.

Accordingly under the terms of the current agreement the rights of Carman John E. Churchman were violated, and the Carrier is ordered to additionally compensate Carman Churchman for all time worked by the junior employes.

AWARD

Sustained as set out in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois this 28th day of April, 1961.