

Award No. 3753

Docket No. 3776

2-AT&SF-EW-'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. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Electrical Workers)**

**ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
— COAST LINES —**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement James I. Hill was unjustly dealt with and the provisions of the agreement violated when the Atchison, Topeka and Santa Fe Railway System refused to return James I. Hill to the position of groundman on February 2, 1959.

2. That accordingly the Atchison, Topeka and Santa Fe Railway System be ordered to compensate James I. Hill for all wage loss from February 2, 1959 until recalled to the position of groundman with all rights preserved.

EMPLOYEES' STATEMENT OF FACTS: James I. Hill, hereinafter referred to as the claimant is regularly employed by the Atchison, Topeka and Santa Fe Railway System hereinafter referred to as the carrier, as a groundman in the Coast Lines Communication Department.

The claimant is an hourly rated employe and is one of five groundmen currently carried on the Coast Lines Communication Department seniority roster and has a seniority date of January 21, 1952.

On February 2, 1959, the claimant reported for work, on return from leave of absence to Mr. C. A. Crouch, Superintendent of Coast Lines Communication Department. The claimant was denied the right to return to the position of Groundman.

Under date of February 7, 1959, the claimant again requested to be returned to the position of groundman in a letter to Mr. C. A. Crouch.

Under date of January 2, 1959, the carrier offered by bulletin two (2) new positions of groundmen.

Under date of January 8, 1959, V. J. Cannon, who has a seniority date of December 22, 1958 was assigned a position of groundman.

This dispute was handled with the officials designated by the carrier to handle such disputes, all of which denied to adjust this claim.

Without prejudice to its position as presented herein, that the employes' claim in the instant dispute is without support of the agreement rules or merit and should be denied in its entirety, carrier states that if in spite of the record presented herein, the Board should nevertheless enter a sustaining award, and the carrier emphatically asserts that the employes' claim does not merit such consideration, the claim for wage loss as set forth in Item (2) of the employes' claim should neither (1) begin prior to such time as it would have been necessary for the claimant Mr. Hill to report for service in California after being released from the Veterans Hospital at Little Rock, Arkansas on February 19, 1959, nor (2) extend beyond June 18, 1959 when Mr. Cannon resigned as apprentice lineman and his former apprentice lineman position was abolished. While the employes' claim contemplates that it begin February 2, 1959, there is nothing in the carrier's records to indicate that the claimant Mr. Hill was ready to resume service on February 2, 1959. The first information the carrier had in that connection was Mr. Hill's letter of February 7, 1959 in which he indicated that he had been released from the hospital and was available for duty at the convenience of the carrier's superintendent of communications. However and actually, Claimant Hill was not discharged from the Veterans Administration Hospital at North Little Rock until February 19, 1959, as evidenced in letter of April 24, 1959, hence he could not properly be considered as being available for duty until he was actually able to report for duty in California after being released from the Veterans Hospital in Little Rock on February 19, 1959.

Also, in consideration of the fact that, as shown in the carrier's statement of facts, Claimant Hill refused to enter the Association Hospital at Los Angeles for a complete examination when he was recalled to service as groundman on February 12, 1960, it is not unreasonable to assume that he would have also refused to enter the hospital for a complete examination in the event he had had the right to displace V. J. Cannon as apprentice lineman when released from the hospital at Little Rock on February 19, 1959, and he had no such right.

In addition, any allowance for wage loss should be less amounts earned in other employment. Such deduction should include earnings as a B&B carpenter helper on the carrier's San Francisco Terminal Division from March 5, 1959 to May 7, 1959, and also any earnings that he may have acquired in outside employment other than for this carrier as aforementioned. In connection with the propriety of making such deductions, the Board's attention is respectfully directed to Second Division Awards 1180, 1282, 1638, 2653, 2811 and 3084 and Third Division Awards 6074, 6362, 6528 and others.

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 were given due notice of hearing thereon.

James I. Hill, the claimant, is regularly employed by the carrier, as groundman, and has a seniority date of January 2, 1952. He continued to work until February 7, 1958, when he was laid off in a force reduction. On Novem-

ber 28, 1958, Hill was recalled to service as a groundman, but the carrier was advised that he would not be able to report as he was being treated at a Veterans Hospital, and would not be available for work until February 1959. On or about February 19, 1959, Hill reported for work to Supt. of Coast Lines Communication Department. He was denied the right to the position of groundman.

The carrier in denying this claim took the position that no vacancy for groundman existed, and that no one junior to the claimant was working as such.

The record clearly shows that two groundman positions were offered by bulletin on January 2, 1959, and that V. J. Cannon, who has a seniority date of December 22, 1958, was assigned a groundman's position on January 8, 1959.

Carrier contends that due to a continuing necessity of training future linemen, groundman V. J. Cannon (hired as groundman on December 22, 1958) was promoted to Apprentice Lineman after having served thirty days as a groundman, and his position as groundman was abolished.

Rule 119 paragraph (D) reads in part as follows:

"Apprentice Lineman: An employe in training for position as Lineman. Apprentice Lineman will be selected from groundman having six months or more seniority as such."

The carrier does not have the right to promote groundman to apprentice lineman in the face of the provision of the current working agreement quoted above.

V. J. Cannon was a groundman, he was employed as such and was promoted contrary to the provisions of the Agreement. Hill was entitled to replace Cannon, and he was unjustly dealt with when the carrier refused to return him to the position of groundman, on or about February 19, 1959.

Hill's claim for wage loss set forth in Item (2) does not begin prior to such time as it would have taken claimant to report for service in California after being released from Hospital at Little Rock, Arkansas on February 19, 1959, nor extend beyond June 18, 1959, when Cannon resigned as Apprentice Lineman, and his position was abolished. Hill's claim is allowed less amounts earned by him either as an employe of the Railroad or in outside employment.

AWARD

Claim sustained as set out above.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of June, 1961.