

Award No. 3863
Docket No. 3759-I
2-N&W-I-'61

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

J. C. JONES, ET AL

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: A. Failure to abide by Rule 30 of the agreement between the Norfolk & Western Railway Company and its employees.

B. Improper adjustment of seniority.

C. Improper dovetailing of the employees under the merger.

D. Improper action of J. W. McDaniel, General Chairman.

EMPLOYES' STATEMENT OF FACTS: That the Norfolk & Western Railway Company, without proper cause or reason, did violate and fail to abide by Rule 30 of the agreement between the Norfolk & Western Railway Company and electricians, et al, of August 12, 1943 as amended, and did not act in accord with the desires of the majority of electricians, and electricians helpers employed by the Norfolk & Western Railway Company.

That the Norfolk & Western Railway Company has damaged and harmed employes of the railroad by readjusting their seniority rights improperly, resulting in material loss of pay and damage to each of the undersigned, as to retirement, furlough rights and job bidding.

That certain employes of the Virginian Railway were placed into, and made a part of, the electrical group of the Norfolk & Western Railway Company, when they were not entitled to by virtue of craft or time, to be included as electrical workers. That the dovetailing between the two groups of employes was not in accordance with the rules heretofore made or agreed upon. That J. W. McDaniel, general chairman, Electrical Workers Union, did not represent the electrical workers at Norfolk, Virginia, nor the majority of the members of System Federation 16 in their request for proper consideration at the time of the merger and dovetailing of employes' seniority and furlough rights. That he deprived them of the right to be heard by the Norfolk & Western Railway Company and/or the Virginian Railway.

We therefore request an award for the regularly employed electricians and helpers at Lamberts Point Piers of the Norfolk & Western Railway Company and those furloughed, granting them their earned seniority in accordance with their time with the Norfolk & Western Railway Company

to General Chairman Wheeler, I. A. of M., his reply of March 25, 1947, and General Chairman Mawyer's, I. B. of E. W., reply of January 20, 1947.

Before the merger, the Virginian Railway Company employed a class of employes at Sewells Point Coal Piers, Norfolk, Virginia, who assisted mechanics, oiled machinery and performed other helper duties. As the need for operators on the various coal pier equipment arose, these helpers were promoted to operators. They were carried on a seniority roster titled, "Machinist Helpers Including Pier Operators Retaining Seniority as Machinist Helpers." These employes were represented by the duly authorized representatives of the International Brotherhood of Electrical Workers.

Discussions with the representatives of the labor organizations have led carrier to believe the recognition accorded the machinist helpers (oilers) as electrical workers on the Norfolk and Western Coal Piers was accorded the machinist helpers at the former Virginian Sewells Point Coal Piers, Norfolk, Virginia, with the seniority rosters left intact, and was handled and acknowledged on a national level, the machinist helpers being recognized as electrical workers, and represented by the International Brotherhood of Electrical Workers. The work performed by employes on seniority rosters of electrician helpers, machinist helpers, including pier operators, and pier operators, dated November 30, 1959 at Sewells Point on the former Virginian Railway was also performed by employes on seniority roster of Lamberts Point Coal Piers, dated November 30, 1959 at Lamberts Point on the Norfolk and Western Railway. Consequently, there was no other proper seniority roster on which to dovetail the former Virginian Sewells Point Coal Pier employes who were still called machinist helpers. This was done and resulted in the integrated seniority roster of electrical workers, operators and helpers, dated December 1, 1959. Clearly, the only difference in these two groups of employes was the payroll title by which the two railroads chose to call them.

The above situation was fully discussed and agreed to during the negotiations of memorandum of agreement dated November 24, 1959. Carrier asserts they were properly dovetailed under the provisions of the November 24, 1959 agreement.

"D. Improper action of J. W. McDaniel, General Chairman."

Carrier is without knowledge of any improper action on the part of J. W. McDaniel, general chairman, and, further, it is restrained from interfering with the rights of employes regarding labor organizations as provided by the Railway Labor Act. Section 2, Fourth, of the Railway Labor Act states, in part, as follows:

"No carrier, its officers or agents, shall deny or in any way question the right of its employes to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employes, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, * * * ."

Carrier has shown that the four alleged problems petitioners have presented are without merit and requests that they 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 were given due notice of hearing thereon.

The Division finds on the basis of evidence in this Docket that a merger of the Virginian Railway Company into the Norfolk and Western Railway Company took place. As a result of this merger the duly authorized representatives of the employes and the carriers pursuant to the Railway Labor Act negotiated an agreement for the protection of the employes affected by the merger. The effect of this agreement was to create an exception to Rule 30 of the applicable agreement, to permit dovetailing of seniority among specified groups of employes of the two railroads. We can find no basis for upsetting or overruling an agreement made between the duly authorized representatives of the employes and the carrier. We find no improper application of the dovetailing agreement.

AWARD

Claim denied as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of November, 1961.