

Award No. 3931
Docket No. 3682
2-CMStP&P-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD
COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement, Machinist Helper, Frank V. Brhel was unjustly deprived of his service rights at the Milwaukee Shops, Milwaukee, Wisconsin.

2. That accordingly the Chicago, Milwaukee, St. Paul and Pacific Railroad be ordered to compensate this employe for all time lost during the period 60 days prior to October 31, 1958.

EMPLOYES' STATEMENT OF FACTS: The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter referred to as the carrier, maintains a back shop, a running repair shop (roundhouse and diesel house) and a car shop at Milwaukee, Wisconsin, commonly known as "The Milwaukee Shops". In the Milwaukee Shops, machinist helpers are employed, all of whom are on the machinist helpers' seniority roster shown in the respective order of their employes.

The carrier had reduced its force of machinist helpers, but on July 8, 1958 increased its force of machinist helpers and recalled Machinist Helper Clarence Hall, whose seniority date is April 17, 1957. The carrier put Machinist Helper Clarence Hall to work on July 8, 1958, even though Machinist Helper Frank V. Brhel, hereinafter referred to as the claimant, who had also been laid off, was subject to recall ahead of Clarence Hall. The claimant's seniority date is April 11, 1957.

On October 20, 1958 the claimant became aware of the fact that a junior helper was working and he immediately protested to the foreman. The carrier responded by laying off Machinist Helper Clarence Hall.

men at Milwaukee Shops to determine the employee or employees who stand to be recalled to service. This is a common and accepted practice of long standing at Milwaukee. Such procedure was followed in the instant case, i.e., the carrier determined it would be necessary to augment its Wheel Shop force through recall of a furloughed employee. Carrier's supervisor then promptly contacted Committeeman Dohrwardt of the machinists organization to determine the senior laid off employee to be recalled. Committeeman Dohrwardt, in turn, contacted the machinist helper committeeman in the Locomotive Department and the committeemen, without further handling with the carrier's supervisor, determined the party to be called. Machinist Helper Hall presented himself to Carrier's Wheel Shop Foreman E. A. Guschl, advising he was the senior laid off employee and had been telephoned by his committeeman to report for work. He began work in the Wheel Shop on July 8, 1958 and continued through, with full knowledge of the machinists committeemen, until October 31, 1958 when he was laid off in force reduction. When the position and work for which employee Hall had been recalled by the machinists shop committee expired, then Machinist Shop Committeeman Dohrwardt on October 31, 1958 filed claim in "* * * behalf of Frank Brhel in amount of 60 days at rate of \$18.72 per day * * *", alleging that claimant Brhel had preference over machinist helper Hall for the work in question and "Carrier" was therefore "responsible" for not having called claimant Brhel for such work.

As stated previously in this submission, Claimant Brhel was not shown on the seniority roster covering machinist helpers in the Wheel Shop and additionally, no protest had ever been made either by the claimant or representatives of his organization over that fact. The Wheel Shop seniority roster was sanctioned and signed as correct by the committeemen of the machinists organization and in view of claimant Brhel's name not having appeared on such roster, carrier cannot agree claimant was entitled to be used as machinist helper in the Wheel Shop in preference to employee Hall.

Assuming, however, that Claimant Brhel would have had preference over Machinist Helper Hall for the work in question, and carrier cannot agree such to be the case, then, in consideration of the fact that after the carrier had discussed with Committeeman Dohrwardt the employee to be recalled, a further discussion of the matter was subsequently had between Committeeman Dohrwardt and the machinist helper committeeman with the result that the committeemen, without further consultation with carrier's supervisor, took it upon themselves to call employee Hall for the work in question, we feel the responsibility for any error that may have been made, if made, in calling a junior employee, rests with those who made the decision and resultant telephone call to employee Hall, i.e., the organization's committeemen.

It is the carrier's position that the instant claim has not been handled in accordance with provisions of Article V of the August 21, 1954 Agreement and is, therefore, barred; further, that the instant claim is entirely without merit and we respectfully request that it be declined in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Agreement provides for point seniority, and Claimant's position on the Seniority List of Machinist Helpers, Milwaukee Shops, is April 11, 1957, while Helper Hall's is six days later.

However the Carrier contends that under established practice a separate seniority list for the Wheel Shop, on which Claimant's name did not appear, was signed by Organization representatives, posted on the bulletin boards delivered to Organization officers, and not objected to by them, and was therefore final under Rule 31(b); that in any event Hall was called to work by Committeeman Frederick Dohrwardt, who according to alleged custom had been contacted by the Shop Foreman to determine the senior furloughed Machinist Helper.

The Organization has denied all these allegations of fact and has supported its denials by the written statements of Arthur H. Sweitzer, Secretary-Treasurer, System Federation No. 76, Harvey O. Erickson, Recording Secretary, Lodge No. 929, I. A. M., and Committeeman Dohrwardt. The Carrier has offered no evidence in support of its allegations, and the Wheel Shop seniority list presented by it shows the name of neither Hall nor Claimant, but ends with an employe whose seniority is earlier than theirs. Furthermore, the Agreement does not authorize local committees to designate the employes entitled to resume service. Rule 27(d) states that in restoration of forces "employes will be restored to service in accordance with their seniority," and that "the local committee will be furnished with a list of employes to be restored to service". The Carrier has failed to establish its defences on the merits.

It contends also that the claim is barred because not presented in the first instance to Claimant's car foreman, and because not appealed within sixty days after denial to the Shop Superintendent, who it contends was authorized to receive the first appeal. Instead the claim was initially presented to the Wheel Shop Foreman, and then appealed to five successive officers of whom the Shop Superintendent was the second instead of the first. Each appeal was taken within the appeal period after denial, but if the second appeal taken was the first authorized appeal, it was taken more than sixty days after the initial denial.

The first five Carrier officials, including the Shop Superintendent, denied the claim on its merits without any reference to defects in procedure. Not until final denial by the Assistant to Vice President was any reference made to procedural defects under the Time Limit Rule. That objection, if valid, therefore came too late, as has been held under similar circumstances by many awards, including Award 1834.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1962.