

Award No. 4026
Docket No. 3981
2-SP(PL)-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. 114, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

SOUTHERN PACIFIC COMPANY (Pacific Lines)

DISPUTE: CLAIM OF EMPLOYEES:

1 — That under the current agreement the Carrier's arbitrary unauthorized action in removing Machinist Helper E. Ybarra (hereinafter referred to as claimant), from the seniority roster of Machinist Helpers at Los Angeles General Shops on June 20, 1960, thereby causing cancellation and destruction of all seniority and other service rights established by claimant subsequent to date he was first employed by the Carrier at the aforementioned Shop Point as Machinist Helper on September 25, 1950, was improper, in violation of the collective bargaining contract.

2 — That accordingly, the Carrier be ordered to restore to claimant his original seniority date of September 25, 1950 on seniority roster of Machinist Helpers at Los Angeles General Shops, including restoration of all other service rights accruing to claimant consistent with such seniority standing.

EMPLOYEES' STATEMENT OF FACTS: Claimant's employment record in the several classifications he has been employed in by the carrier during the period January 6, 1948 to June 20, 1960, inclusive, indicates the following:

- “1 — Employed as Shop Laborer on January 6, 1948.
- 2 — Promoted to **Machinist Helper September 25, 1950.**
- 3 — Furloughed as Machinist Helper on December 29, 1950.
- 4 — Recalled to service as Machinist Helper January 30, 1951.

It is significant, viewed in the light of petitioner's contentions in this case, that of the two sentences which make up paragraph (f) of Rule 43, the first, which provides that:

"If within the first service period of 130 days a regular apprentice, or within the first 65 service days a helper apprentice, shows no aptitude to learn the trade, he will not be retained as an apprentice."

is confined to the individual apprentice, identified in the singular, whereas, the second and last sentence of that paragraph provides:

"Helper apprentices and regular apprentices when drawn from the rank of helpers, will retain seniority as helpers during the respective 130 and/or 65 service days provided for in this paragraph."

and is expanded to embrace the plural, which can only mean "helpers" of all crafts, without exception, and without regard to the craft in which a regular or helper apprentice may hold seniority. The rule is not, as contended by petitioner, confined to the particular craft in which the regular or helper apprentice worked immediately prior to indenture.

CONCLUSION

Carrier asserts the instant claim is entirely lacking in agreement or other support and if not dismissed, requests that it 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.

When Claimant was indentured as a painter helper apprentice he held seniority as a painter helper as of February 27, 1953, and also as a machinist helper as of September 25, 1950. The Rules do not forbid such duplicate seniority. He completed his apprenticeship on November 11, 1958, and was then laid off.

On June 20, 1960 Claimant was called back as a machinist helper. The Carrier then assigned him that seniority on the roster instead of his former date of September 25, 1950, upon the ground that under Rule 43 (f) his retention as a painter helper apprentice for more than 65 days terminated his prior seniority, not only as painter helper, but also as machinist helper.

Rule 43 relates to apprentices; it seems clear from a study of the rule that paragraph (f) is concerned only with seniority in the work which an employe leaves in order to become an apprentice, and not with seniority in another craft to which he may be entitled.

Under the Agreement Claimant's machinist helper seniority of September 25, 1950, was not terminated by his subsequent re-employment as a laborer or as a painter helper. It was not affected by his apprenticeship, since the record does not show that he had an opportunity to return to machinist helper employment and was prevented by the apprenticeship from protecting such assignment.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of July 1962.