

**Award No. 4032**  
**Docket No. 4041-I**  
**2-C&NW-I-'62**

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
**SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**ANTHONY E. KONTNEY**

**CHICAGO & NORTH WESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That under the current agreement, the carrier improperly assigned Earl Olson, Boilermaker Welder, to a vacancy at Green Bay, Wisconsin, on May 22, 1961. Therefore I, Anthony E. Kontney, be compensated for every day that Boilermaker Welder Earl Olson is on the job.

**EMPLOYEES' STATEMENT OF FACTS:** On April 5, 1961 I made application for a job as a boilermaker and combination acetylene and electric welder at Green Bay, Wis. under Rule 26, Federated Shop Crafts Agreement, copy to A. L. Kohn, General Chairman Boilermakers Dist. 4.

On April 12, 1961, Mr. A. L. Kohn, General Chairman Boilermakers Dist. 4 notified Mr. Harry Spencer, Master Mechanic Green Bay (a copy to T. M. VanPatten), that I had applied for work at Green Bay under Rule 26.

On May 23, 1961 Mr. A. L. Kohn, General Chairman Boilermaker, wrote Mr. T. M. VanPatten, Director of Personnel Chicago North Western Railroad Company that Mr. Raymond LaRue, a boilermaker employed at Green Bay, had died suddenly, and that I, Anthony E. Kontney, should be assigned to the job as my application under Rule 26 was the only one on file at the time of the vacancy.

On June 2, 1961 I made application for position under Bulletin 049.

On June 16, 1961 I was informed by Mr. A. L. Kohn, General Chairman Boilermakers Dist. 4, that Earl Olson made application for transfer to Green Bay under Rule 18, May 11, 1961.

On June 30, 1961 I was informed by Mr. A. L. Kohn by a copy of a letter from Mr. VanPatten that Earl Olson was assigned to the job as boilermaker welder under Rule 18, and that Rule 26 is not considered.

My reply to Mr. A. L. Kohn, General Chairman Boilermakers dated July 2, 1961 contends that Rule 26 should be considered for this job because there was no other application on file for work at Green Bay under Rule 26 or Rule 18 at the time of the vacancy caused by the death of Boilermaker Ray LaRue.

**POSITION OF EMPLOYEE:** On account of the fact that my application under Rule 26 was the only one on file at Green Bay when the vacancy occurred.

The general chairman of the organization representing the craft or class in which claimant holds his seniority has clearly recognized by his letter of June 30, 1961 to claimant, that the assignment made in this case was entirely proper. Claimant in progressing this case to the Board is not, in fact, relying on the proper application of schedule rules, as agreed to between the carrier and the organization but is attempting to change that agreed-to understanding.

The carrier submits that the claim in this case must be denied, for the claim as presented would require that schedule rules be interpreted and applied contrary to the agreed-to understanding and application of such rules on the property.

**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.

Anthony E. Kontney, petitioner in this dispute, contends that the carrier wrongfully assigned Earl Olson to fill a boilermaker welder position at its Green Bay, Wisconsin shop and relies on Rule 26 of the current Federated Shop Crafts' agreement to support his claim.

Rule 26 reads:

"When forces are reduced and men are needed at other points they will, at their request, be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the railway company. Seniority to govern all cases."

Earl Olson made application for transfer to Green Bay, Wisconsin under the provisions of Rule 18 as revised by Memorandum of Understanding dated March 16, 1940, reading as follows:

"18. Loss of Seniority.

Employes transferred from one point to another, with a view of accepting a permanent transfer, will, after thirty days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employes will not be compelled to accept a permanent transfer to another point."

"Understanding of application of Rule 18:

1. That the provisions of rule 18, federated crafts' agreement are applicable only to men in active service.

2. That men having on file application under rule 18 for transfer to other points will be given preference for such transfer over em-

ployes having application on file for employment at other points under provisions of rule 26, without regard to question of seniority as between employes filing application under rule 18 and those seeking employment at other points under rule 26." (Emphasis ours.)

Since Earl Olson was in active service when he made application for transfer to Green Bay, Wisconsin, he was properly assigned to fill the position of boilermaker welder at Green Bay under the provisions of Rule 18 as revised and a denial award is required.

#### AWARD

Claim denied in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois this 13th day of July 1962.