

Award No. 4103

Docket No. 3950

2-SOU-MA-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That in violation of the current agreement the Carrier at it's Charlotte, North Carolina Roadway Shop, effective December 19, 1959, furloughed Machinist D. W. Kiser, seniority date July 15, 1948, and wrongfully continued in employment Machinist J. R. Rader, seniority date August 19, 1956.

2. That Machinist Kiser, hereinafter referred to as the Claimant, be reimbursed in the exact same amount as was paid by the Carrier to Machinist Rader from Saturday, December 19, 1959 through Saturday, January 2, 1960, specifically, three hundred-twenty five dollars and sixty nine cents (\$325.69).

EMPLOYES' STATEMENT OF FACTS: The Southern Railway Company, hereinafter referred to as the carrier, has at Charlotte, North Carolina, a large shop used solely for the modification, maintenance and repair of roadway machinery and equipment. On it's Eastern Lines, which includes Charlotte, the carrier employed, at the time of the violation of agreement, approximately twelve pump repairers (composite mechanics). These men are monthly rated machinists who travel mostly by motor truck over the carrier's Eastern Lines and maintain roadway equipment in the field. When permanent vacancies occur for pump repairers the vacancy is advertised in accordance with the Memorandum Agreement dated June 2, 1953. However, when temporary vacancies exist, or occur, for pump repairers these vacancies are filled under the provisions of the letter of May 8, 1944, page 80, current agreement, reading as follows:

"Mr. W. W. Dyke, General Chairman, Carmen

Mr. L. C. Ritter, General Chairman, Machinists

In this situation, the carrier was not under any contractual obligation to remove Mr. Rader from the position of pump repairer and place Mr. Kiser thereon. Then, too, Mr. J. R. Rader had had previous experience as pump repairer and was qualified to perform the required work whereas Mr. D. W. Kiser had not had such experience. There is, therefore, considerable doubt as to his being qualified to perform the duties and assume the responsibilities of a pump repairer. Furthermore, Mr. Kiser did not accrue a contract right to displace Mr. Rader even if he had been qualified.

As has been held by all Divisions of the Adjustment Board on numerous occasions, a claimant who comes before the Board assumes the burden of presenting some consistent theory which, when supported by the facts, will entitle him to prevail. All the Association has done thus far in pressing the claim and demand which it here attempts to assert on behalf of Mr. Kiser is to insist that he be paid, without making any effort to support such contention by citing agreement rules. Carrier does not, therefore, know precisely what absurd contention the Association will make in its submission of the dispute to the Board. If, however, the Association cites and relies upon the letter of May 8, 1944, dealing with the filling of temporary vacancies, hereinabove quoted, in support of its contention, carrier directs particular attention to the fact that the understanding reflected in the letter clearly provides that if an employe desires to take a temporary vacancy, he has to make request therefor and handle the matter with the local committee and the foreman in charge. No such action was taken by Claimant Kiser in this case.

Carrier also directs attention to the fact that the referred to letter specifically states that the understanding therein "does not apply in the case of force reductions." Machinist Kiser, here claimant, was laid off in a force reduction. Thus the referred to understanding concerning the filling of temporary vacancies cannot possibly have any application to the here involved situation.

When Mr. D. W. Kiser, here claimant, was laid off as machinist in a force reduction of machinists employed at Charlotte Roadway Shop effective December 19, 1959 he did not, under any provision of the agreement in evidence, have a contract right to displace Mr. J. R. Rader then employed on another seniority district filling a temporary vacancy in the position of pump repairer in the absence of Pump Repairer L. R. Partee, nor does he have any contract right to be paid the compensation here demanded on his behalf by the Association. In these circumstances, the Board cannot do other than make a denial award.

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 Claimant D. W. Kiser has been employed as a machinist at the Carrier's Charlotte (North Carolina) Roadway Shop which is a separate seniority district for machinists. His seniority date is July 15, 1948, and he was acting

Local Chairman of the machinists' craft at the time here relevant. On December 1, 1959, L. R. Partee, a Pump Repairer (Composite Mechanic), who held seniority in another seniority district, i.e., Eastern Lines, became ill, thus creating a temporary vacancy. Since there were no furloughed pump repairers on the Eastern Lines seniority roster, the Claimant was informed by the Carrier of the existing temporary vacancy in accordance with an understanding contained in a letter, dated May 8, 1944, from the Carrier's assistant vice-president to the general chairmen of the various crafts covered by the applicable labor agreement (hereinafter referred to as the "1944 understanding"). The Claimant suggested Machinist J. R. Rader who also held seniority in the Roadway Shop seniority district with a seniority date of August 19, 1956. Rader agreed to fill the temporary vacancy for its duration and was temporarily assigned to Partee's position.

On December 15, 1959, the Carrier posted Bulletin No. 80 which stated, as far as here relevant, that 56 machinists in the Roadway Shop, among them the Claimant and Rader, would be furloughed because of a reduction in the working force. Pursuant thereto, the Claimant was furloughed from December 19, 1959, through January 2, 1960. However, Rader was not furloughed but continued to fill his temporary assignment until January 3, 1960, when Partee returned from his sick leave.

The Claimant filed a grievance in which he contended that Rader who is junior to him should have been furloughed. He asserted that he should have been assigned to fill the balance of the temporary vacancy created by Partee's sickness. He requested compensation equal to that received by Rader during the period from December 19, 1959, through January 2, 1960. The Carrier denied the grievance which is now before us for adjudication.

In support of his claim, the Claimant relies on Rule 26 of the applicable labor agreement which provides, in essence, that reductions in the working force due to necessary reductions in expenses and subsequent recalls to active service shall be made on the basis of seniority. The flaw in the Claimant's argument is that Rule 26 only applies to each craft or class of employees within a specific seniority district and not to the Carrier's system as a whole. At the time of the furloughs in question, Rader was employed as a pump repairer in the Eastern Lines seniority district and not as a machinist in the Roadway Shop seniority district to which Bulletin No. 80 exclusively applied. His tenure status was governed by the 1944 understanding which covers the filling of vacancies caused by temporary absences because of sickness, leave of absence, etc., and which reads, as far as pertinent, as follows:

"We were in agreement that the practice is in such cases that the oldest senior qualified man could take the temporary vacancy by virtue of his seniority by handling the same with the Local Committee and the Foreman in charge, and when so taken, could work the same until such time as the man who was off sick or off on leave of absence, returned . . . This relates only to temporary vacancies described above and does not apply in the case of force reductions . . ."
(Emphasis ours.)

A careful examination of the above provision has convinced us that an employe, who has been duly designated by the Local Committee and accepted a temporary vacancy within the contemplation of the 1944 understanding, is contractually entitled to fill such vacancy until the regular employe returns to active service, except in the event of furloughs due to force reductions in the

craft or class to which he is temporarily assigned. Any other interpretation would not only run counter to the evident intent of the 1944 understanding but also deprive it of its vitality. However, a basic rule to be observed in the construction of written agreements or understandings is, as far as possible, to give effect to the obvious intent and aim of the parties. See: Frank Elkouri and Edna A. Elkouri, **How Arbitration Works** Rev Ed., Washington, D. C., BNA Incorporated, 1960, pp. 203-204 and cases cited therein. Since the 1944 understanding contains a special rule it supersedes the general Rule 26 in appropriate instances.

It is true, as submitted by the Claimant, that Bulletin No. 80 listed Rader among the machinists to be furloughed at the Roadway Shop. But the Bulletin only applied to his position as machinist at said Shop and not to that temporarily held by him in the Eastern Lines seniority district. The listing of Rader in the Bulletin does not, therefore, sustain the instant claim.

In summary, we hold that Rader was entitled as a matter of right to fill the temporary assignment until Partee returned from sick leave to active service and that the Carrier was not obligated temporarily to assign the Claimant to Partee's position when he was furloughed on December 19, 1959.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of December 1962.