

Award No. 4410

Docket No. 4299

2-REA-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

**INTERNATIONAL ASSOCIATION OF MACHINISTS
RAILWAY EMPLOYES' DEPARTMENT A. F. of L. — C. I. O.**

RAILWAY EXPRESS AGENCY, INC.

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Garage Mechanic Albert S. Mangum was unjustly laid off and thereby deprived of his seniority, service rights effective May 26, 1961 at Rocky Mount, N. C.

2. That accordingly the R E A Express be ordered to compensate this employe for all lost wages and any other benefits he is entitled to had he remained in service until he is restored to service.

EMPLOYEES' STATEMENT OF FACTS: The R E A Express, hereinafter called the carrier, maintained at Rocky Mount, N. C. a force of employes holding various job titles in addition to one garage foreman and one garage mechanic prior to May 26, 1961.

Effective May 26, 1961, the carrier made the election to lay off the garage mechanic, Albert S. Mangum. The claimant was the senior employe on the Machinist Garage Mechanics' seniority roster at the point, with a date of August 23, 1950. After laying off the claimant, the carrier assigned another employe, W. L. Braswell, garage foreman, holding a seniority date only as a foreman of May 1, 1949, with no date as a mechanic, to perform machinist garage mechanics' work and continues to perform the work formerly performed by the claimant.

This dispute has been handled in accordance with the terms of the current agreement, dated July 1, 1954, as subsequently amended, with the carrier officers assigned to handle claims, who declined to adjust the dispute.

POSITION OF EMPLOYEES: It is submitted as disclosed in the above statement of facts, that the carrier unjustly dealt with this claimant and thereby deprived him of his contractual seniority-service rights in clear violation of all rights contained in the current collective agreement particularly the following provisions thereof:

" * * * the * * * handled * * * an identical claim as here before us. * * * the Grand Lodge officer accepted the declaration * * *. This acceptance on the part of the Petitioner evidences agreement with the Carrier that men having less than eight hours' rest will not be considered available for service and the Division so holds."

Award No. 19307, Referee Ferguson, denied:

"The Division finds the facts in this case to be the same as those found in the settlements recited by the respondent and the claim here presented must be and is denied."

Award No. 19346, Referee Daugherty, denied:

"* * * Settlements of record show that the parties have agreed there is no claim basis when the work is done by road brakemen in connection with their own engine."

CONCLUSION

The rules of the applicable agreement and the interpretation that previously has been placed on these rules by the parties to the dispute prove conclusively that Mr. Braswell has seniority rights at Rocky Mount, N. C. which antedate those of the claimant. In accordance therewith, the claim should 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.

W. L. Braswell was transferred from the Agency's Norfolk point to Rocky Mount, North Carolina, as garage foreman, on May 1, 1949. At that time the only other employe at the Agency's Rocky Mount garage was W. F. Williams, who resigned from service on June 16, 1950.

From June 16, 1950 until August 23, 1950, the Rocky Mount operation was that of a "one man garage" under Braswell.

On August 23, 1950, the Claimant became a Machinist Garage Mechanic at Rocky Mount.

Effective May 26, 1961, the Agency elected to lay off the Claimant, and assigned Braswell to perform Machinist Garage Mechanics' work formerly performed by Claimant.

It is Claimant's contention that Braswell acquired no seniority as a Machinist Garage Mechanic at Rocky Mount, and that Claimant was unjustly laid off.

It is the Agency's contention that Braswell did acquire seniority under the controlling agreement as of June 16, 1950, prior to that of Claimant.

The question to be determined is:

During the period from June 16, 1950 to August 23, 1950 did Braswell, working as a "one man garage" acquire Machinist's Garage Mechanic seniority at Rocky Mount?

Rule 1 of the Controlling Agreement reads as follows:

"Employees Affected. The Express Agency will recognize the right of the International Association of Machinists to make the rules with the Express Agency to govern all employees doing the work of Machinist or Automobile Mechanic, Machinist Helper or Automobile Mechanic's Helper, Apprentice and Helper Apprentice, their gang leaders, and employees who use the tools of the trade to instruct, inspect, and test the work of the above-mentioned employees, at all shops and garages, or other facilities of the Express Agency where employees performing such work are now represented by the Union."

Rule 31 of the Controlling Agreement reads as follows:

"Seniority. Seniority of employees covered by this agreement shall be confined to the point employed. An employee in the service of the Company thirty (30) calendar days or more shall be considered a permanent employee and shall accumulate seniority rights from date he first entered service."

A careful reading of both Rules and a review of the arguments and statements on behalf of the Agency and the Employees convinces us that Braswell came within the protection of the Agreement during the period June 16 to August 23, 1950, and acquired rights senior to those of the Claimant for the work here in question.

The references to errors and change in certain seniority rosters was not determinative in our conclusion. Seniority is not dependent on clerical computation or error. It arises from the Agreement which outlines the rights to which the employee is entitled.

Certain procedural objections have been made to the record as it appears before us, and we shall dispose of them even though the determination of the objections does not affect the merits of the dispute before us.

First, the Agency objects to the failure of the employees to include in their original Submission the so-called "All Data" statement in accordance with Circular No. 1 of the National Railroad Adjustment Board and with Circular "A" of the Second Division. The objection comes too late, and there is nothing in the Submission by the Agency or in its Rebuttal which indicates that all data had not been submitted on the property. (Except the matter dealt with in the following paragraph).

The next objection is by the Agency to Exhibits 2 and 3 attached to the Employees' Rebuttal, as violative of the above mentioned Circulars. This objection is valid and is sustained, since a comparison of the dates of the exhibits with the date of the Employees' Notice of Intention shows that these exhibits could not have been considered on the property. We decline to consider them as a part of the record here.

The matter of the submission of a brief by the Carrier Member of the Committee assigned to this dispute has been challenged by the Employee Member as violative of Circular No. 1 of the National Railroad Adjustment Board and of our Circular "A", in that this document adds to the Record as made and places before us new matter not heretofore made a part of the particular question in dispute.

A "Brief" can be defined as a presentation of the authorities both legal and logical to sustain an advocate's position. The logical argument should be confined to the facts in the record which is being examined, and hypothetical examples drawn around those facts. The legal argument should be confined to relevant and pertinent authority or precedent. All should be drawn together with a view of advising the decisional authority of the advocate's position. There should be no extrinsic evidence presented; it is to be an abstract of the record as already made with the logical conclusion drawn, based upon the authorities cited.

We have examined the Brief submitted herein, and do not find that it offends any of these principles, and accordingly its submission is not in violation of any of our Rules.

The more particular objection that Exhibits "A", "B", "C", and "D" attached to the Brief are new matter and should not be considered by us is also overruled, since an examination of the exhibits in question reveals that they are copies of official documents of the files of this Division, to which all Members have access, and the contents of which all Members are aware.

AWARD

Claim No. 1 is overruled.

Claim No. 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of February, 1964.