

Award No. 4493
Docket No. 4275-I
2-MP-I-'64

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

C. M. SMITH, EMPLOYEE
(Carman)

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

This dispute concerns a Memorandum Agreement consolidating the Seniority of Houston and Kingsville, Texas. * * *

PETITIONER'S STATEMENT OF FACTS: I was employed by the Missouri Pacific Railroad Company as carman in Houston, Texas, on September 1st, 1960. I am a member of San Jacinto Lodge, Local No. 452.

In October, 1960, six weeks after I was employed, a carman from Kingsville, Texas (Mr. V. Pena), came to Houston and was employed. Shortly after Mr. Pena was employed, my job was disturbed and I was allowed to displace Mr. Pena, as he was a junior carman. January 3rd, 1961, several other carmen from Kingsville, Texas, came to Houston and were employed as carmen. These men, including Mr. Pena, were then given seniority rights over me. I consulted the general car foreman about this and he said that Mr. W. H. Smith, local chairman, said that any carman hired in Houston after June 1st, 1960, could be displaced by carmen from Kingsville, Texas.

At that time I wrote this grievance up and presented it to Mr. H. W. Smith, Chairman, Local No. 452. In Mr. Smith's reply, he sent a copy of a memorandum agreement signed by Mr. W. H. Bond, Mr. Ray E. Marshall, and Mr. B. W. Smith.

As the first paragraph of this memorandum agreement shows, it consolidates Seniority Subdivisions No. 4, 5 and 6 in Kingsville, Texas, to be effective May 1st, 1960.

In case the members of the board are not familiar with the term of seniority subdivision, I would like to make a brief explanation. At any point where a craft has several different fields of work, sometimes they are divided into subdivisions such as in this case. On the Missouri Pacific, seniority subdivisions for carmen are:

"No. 1 — Patternmakers

No. 2 — Upholsterers

No. 3 — Painters and Silver Platers

No. 4 — Wood Mill mechanics, coach builders,
cabinet makers and locomotive car-
penters

No. 5 — Freight Car truckmen and oilers

No. 6 — All other carmen

No. 7 — Apprentices

No. 8 — Coach Cleaners"

This is shown in Rule 25, page 22 of our new Agreement effective June 1st, 1960.

Therefore, this memorandum agreement consolidated seniority subdivisions No. 4, 5 and 6, which had previously been on separate lists in Kingsville, Texas. This has nothing to do with the Seniority Arrangement in Houston, nor does it give these carmen prior rights in Houston, which has been previously claimed and allowed.

Our new controlling agreement, effective June 1st, 1960, has nothing in it that consolidates the seniority of Houston and Kingsville. I would like to quote Rule 25, Paragraph A, of our agreement:

"Seniority of Employees in each craft covered by this Agreement shall be confined to the Point and Seniority subdivision employed."

In case there had ever been any kind of understanding or agreements previously to June 1, 1960, concerning the consolidation of seniority of Houston and Kingsville, I would like to refer your attention to Page 109, Paragraph 2, of our agreement in which I quote:

"All understandings, interpretations, and Agreements previously in effect on the Gulf District are hereby declared null and void as of the effective date of the Consolidated Agreement except those agreements specifically retained by the terms of the Consolidated Agreement."

There isn't any agreement specifically retained in our consolidated agreement pertaining to the consolidation of Houston and Kingsville. For the past eighteen (18) months, I have been trying to straighten this dispute out through union officials without results. Recently, members of our local lodge wrote a letter of protest to General President A. J. Bernhardt, requesting that he send a grand lodge representative to Houston to straighten this matter out. As of this date, Mr. Bernhardt has not granted this request.

If there should be any other agreements presented to this Board in this case, other than the memorandum agreement, and consolidated agreement, I shall be unaware of its existence and would like it confirmed as to when it was written, presented and approved by the Railway Employees Department.

I am requesting that the members of the National Railroad Adjustment Board study the facts of this dispute and render a decision that will place these carmen from Kingsville at their proper place on the seniority roster according to date of employment in Houston.

CARRIER'S STATEMENT OF FACTS:

1. This dispute is governed by an agreement effective June 1, 1960, between the carrier and System Federation No. 2 which is on file with your Board, and is made a part hereof by reference.

2. The carrier and the Brotherhood of Railway Carmen of America entered into an agreement dated April 12, 1960, consolidating the seniority of the carmen at Houston with the carmen on the Kingsville Division. The claimant in this dispute has referred to this memorandum agreement.

3. Upon receipt of Executive Secretary Sassaman's letter of June 26, 1962, notifying the carrier of the intention of the claimant to file a submission in connection with the subject matter of his letter of June 25, 1962, to Mr. Sassaman, the chief personnel officer caused a search of the carrier's file to be made to see if any such dispute has been presented and handled on the property as required by the Railway Labor Act and Rule 31 of the shop craft agreement. The search failed to disclose that any such claim had ever been presented to any officer of the carrier or had ever been handled in any manner on the property. The chief personnel officer wrote the mechanical superintendent at Houston where claimant is employed requesting that he furnish a complete statement of facts concerning the matter and forward his file, if any. The mechanical superintendent replied as follows:

"Houston, Texas — July 5, 1962
PR-100

Mr. B. W. Smith:

Your letter June 29, 1962, file G-360-3132, reference to Carman C. M. Smith's intent to file dispute covering his seniority at Houston — Settegast Car Department.

The only thing we have on our file is copy of undated claim that Mr. Smith made to Local Chairman of Carmen and copy to General Car Foreman Freeman.

Mr. C. M. Smith went to work at Settegast Car Department, Sept. 1, 1960, and has not protested his seniority to this office up to date. I am sure Mr. Smith was aware of his position on seniority roster as roster was posted as required by the Current Agreement.

There was a memorandum agreement made at St. Louis dated April 12, 1960 and effective May 1, 1960 consolidating the Kingsville and Houston Car Department employees seniority into one roster, and Mr. Smith went to work after the effective date of this agreement.

/s/ E. E. Dent"

POSITION OF CARRIER: It is the position of the carrier that this claim must be dismissed by your board because the claim has not been handled in the usual manner on the property as required by the Railway Labor Act and the claim has not been presented and appealed on the property in the manner prescribed by Rule 31 of the shop craft agreement.

As is apparent from the carrier's statement of facts, the carrier does not know what claimant is claiming, only that the claim concerns his seniority. The only information the carrier has, aside from the claimant's letter of intent filed with your board, is the copy of the letter to the local chairman referred to by Mechanical Superintendent Dent in the second paragraph of his letter quoted above. The letter reads as follows:

"Mr. W. H. Smith
Local Chairman 8452

Please accept this as a time claim for date of April 5, 1962 for 8 hours at rate of \$2.6550 per hour, on account of being illegally displaced by Junior Carman, R. L. Martinez.

C. M. Smith

cc: Mr. F. T. Freeman"

Note the claim was addressed to the local chairman. General Foremen Freeman was given a copy. This apparently is some dispute claimant has with the officers of the Brotherhood Railway Carmen of America. This is borne out by the fact claimant states in his letter of intent filed with Mr. Sassaman:

"This grievance concerning my seniority rights has been written up to Mr. W. H. Smith, Local Chairman San Jacinto Lodge, Local No. 452, and appealed to San Jacinto Lodge; Mr. W. H. Bond, General Chairman; Mr. H. C. Chatterson, Secretary Missouri Pacific Joint Protective Board; Mr. A. J. Bernhardt, General President BRC of A; and to Mr. A. S. Parker, Secretary of the Grand Lodge, General Executive Board, without results in straightening this dispute out."

Notice all of the persons named are representatives and officers of the Brotherhood Railway Carmen of America. None of them are officers of the carrier. The carrier, of course, is not a party to the procedures handled within the organization and we have no knowledge of such proceedings. It would appear claimant's dispute is purely one within his union. Your board, of course, is not a proper forum to consider such matters.

The usual manner of handling claims on this property is to present the claim to the master mechanic. If his decision is not satisfactory, appeal may be taken to the chief mechanical officer and then to the chief personnel officer. If the latter's decision is not satisfactory, conference is held following which the claim may be progressed to your board. No part of this procedure was followed in the handling of this claim. Section 3, First (i) of the Railway Labor Act provides that disputes between an employe and a carrier

"shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but failing to reach an adjustment in this manner, the dispute may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board. . . ."

This claim has not been handled in the usual manner up to and including the highest officer of the carrier designated to handle such claims. Since this dispute, whatever it might be, has not been handled in the usual manner on the property, your board does not have jurisdiction to consider the petition by claimant, and it must be dismissed.

Although the fact that the claim was not handled on the property in the usual manner as required by the Railway Labor Act is more than sufficient reason for your Board dismissing the claim, we also point out the agreement between carrier and System Federation No. 2 which governs this dispute provides for the manner in which claims and grievances must be handled. Rule 31 of the agreement is taken from Article V of the Agreement of August 21, 1954, as amended. Since the rule is taken from a national agreement with which your board is very familiar, we do not believe it is necessary to quote the entire rule here. The rule provides, first,

“All claims or grievances must be presented in writing by or on behalf of the employe involved to the officer of the Carrier authorized to receive same within 60 days from the date of the occurrence . . .”

No claim has been presented to any officer of the carrier. For that reason, the claim has not been properly presented and must be denied. Of course, none of the other requirements of the rule have been followed either. Your board has held many times that the time limit rule must be complied with literally. Failure to comply with the rule requires a denial of the claim.

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.

The Railway Labor Act contemplates that before a grievance can be brought to this Board it “shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes.” (See 3 First (i)). This was not done with respect to the subject matter of this docket.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.