

Award No. 5626
Docket No. 5372
2-PC(PRR)-SM-'69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George S. Ives when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 152, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Sheet Metal Workers)

PENN CENTRAL COMPANY
(Formerly Pennsylvania R. R. Co.)

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly removed the name of Sheet Metal Worker, A. E. Graves from the 1965 Sheet Metal Workers' Roster at Columbus, Ohio.

2. That accordingly, the Carrier be ordered to restore A. E. Graves' name to the Sheet Metal Workers' Seniority Roster at Columbus, Ohio with the same seniority rights he had before his name was improperly removed.

EMPLOYEES' STATEMENT OF FACTS: Furloughed Sheet Metal Worker A. E. Graves, hereinafter referred to as claimant, held the position of assigned Laborer with the Pennsylvania Railroad, hereinafter referred to as the carrier, at Columbus, Ohio, prior to October 16, 1964. He possessed the following seniority in the following classes:

Common Laborer	- 0-1-42
Assigned Laborer	- 9-15-42
Coach Cleaner	- 10-27-42
Sheet Metal Worker Helper	- 2-6-52
Sheet Metal Worker	- 11-26-52

In connection with the carrier's sale of its Sandusky Branch to the Norfolk and Western Railway Company, effective October 16, 1964, Claimant A. E. Graves was offered and accepted employment as a Laborer with the Norfolk and Western Railway Company, effective November 1, 1964. A copy of a form, signed by the claimant, indicating his desire to accept employment on the N&W, is attached as Exhibit No. 1.

said Agreements, which constitute the applicable Agreements between or concerning the parties, and to decide the present dispute in accordance therewith.

The Railway Labor Act, in Section 3, First Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out of "grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreements between the parties to them. To grant the protest of the Employees in this case would require the Board to disregard the Agreements between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute or established by practice. The Board has no jurisdiction or authority to take any such action. See Second Division Award No. 1122, Third Division Award Nos. 6803, 4763 and Fourth Division Award No. 242.

CONCLUSION

The Carrier has shown that the Claimant is no longer an employe of this Carrier because of his acceptance of employment with the N&W. The Carrier has also shown that, because he has no employment relationship with it, the Claimant has no right to protest under a Schedule Agreement rule which applies only to employes. Therefore, the Carrier respectfully requests that your Board dismiss or deny the protest of the Employees in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Employees, with the right to test the same by cross-examination, the right to produce competent evidence in its own behalf at a proper trial of this matter and the establishment of a record of all of the same.

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 instant dispute arose out of the removal of claimant's name from the 1965 Sheet Metal Workers' Roster at Columbus, Ohio, which Petitioner contends was violative of Rules 3-F-2 and 3-F-3 of the Schedule Agreement between System Federation No. 152 and Carrier. The essential facts are not in issue and the pivotal question for determination is whether claimant forfeited his seniority rights as a furloughed sheet metal worker on the Pennsylvania Railroad when he accepted employment as a laborer with the Norfolk and Western Railway Company pursuant to the terms of an Agreement between said Carrier and its Employees represented by Transport Workers Union of America, AFL-CIO; System Federation No. 16 and System

Federation No. 152 effective November 1, 1964 as well as Section 3 of the Agreement for Protection of Employees between said Carrier and twenty (20) labor organizations effective January 10, 1962.

The issue herein resulted directly from the sale of Carrier's Sandusky Branch to the Norfolk and Western Railway Company effective October 16, 1964. On the date of transfer, claimant was regularly employed as a laborer on the Sandusky Branch. He also held seniority both as a furloughed Sheet Metal Worker and Sheet Metal Worker Helper in the Columbus Seniority District. In accordance with the protection afforded by the above mentioned Agreements, claimant and other similarly situated employees accepted employment with the Norfolk and Western Railway Company, and continued working in their respective classifications on the former Sandusky Branch of the Pennsylvania Railroad. It is undisputed that claimant forfeited his seniority as a laborer on the Pennsylvania Railroad when he signed a form advising that he accepted employment with the Norfolk and Western Railway under the terms and provisions of the November 1, 1964 Agreement and Section 3 of the January 10, 1962 Agreement.

Thereafter, Carrier posted the Sheet Metal Workers Craft seniority roster for the Columbus District on February 26, 1965 without inclusion of the claimant's name on the theory that claimant in accepting employment with the Norfolk and Western Railway Company had forfeited all seniority rights as an employee of the Pennsylvania Railroad Company.

In the first instance, Carrier avers that Petitioner is no longer the duly designated and authorized representative of claimant, and that System Federation No. 16 as well as the Norfolk and Western Railway Company are necessary parties entitled to due notice of all hearings under Section 3, First (i) of the Railway Labor Act, as amended. The record reveals that System Federation No. 152 has been specifically authorized by claimant to represent him in this dispute concerning his status as a furloughed Sheet Metal Worker with Carrier and that System Federation No. 16 as well as the Norfolk and Western Railway Company have been duly notified of the pendency of this proceeding.

As to the merits of the dispute, it is necessary to determine whether claimant's acceptance of employment with the Norfolk and Western Railway Company as a laborer on the former Sandusky Branch was properly construed by Carrier as an election by claimant to terminate his employment relationship with Carrier, including his accrued seniority rights as a furloughed Sheet Metal Worker and Sheet Metal Worker Helper.

Analysis of Section 5(a) of the Memorandum of Agreement effective November 1, 1964, discloses that transferred employees will be removed from the seniority roster at the point they leave, which clearly indicates that claimant forfeited his seniority as a laborer with the Pennsylvania Railroad when he accepted employment on the Norfolk and Western Railway in the same classification, but we cannot construe the pertinent language of the Agreement as implying, either directly or indirectly, that such a transfer would effect more than the specific seniority roster involved in the election by the claimant. Accordingly, it would appear that claimant relinquished no other seniority rights with the Carrier, and that his name should have remained on the Sheet Metal Workers' seniority roster in accordance with Rules 3-F-2 and 3-F-3 of the applicable Agreement between the parties until

such time as claimant may be recalled as a Sheet Metal Worker or Sheet Metal Worker Helper. As a furloughed employe, he could obtain other employment with another railroad without severing his employment relationship with Carrier in the absence of contractual restrictions applicable to such employment while furloughed.

The Agreement of November 1, 1964 was signed by all members of System Federation No. 152, but no Sheet Metal Workers were directly affected by its terms through the sale of the Sandusky Branch to the Norfolk and Western Railway Company. Careful examination of the pertinent provisions contained in the Agreements relied on by Carrier fails to reveal contemplation by the parties of the unique situation involved herein and explicit language could have been incorporated to eliminate any ambiguity.

In view of the foregoing, we find that Carrier violated the applicable Agreement between the parties by removing claimant's name from the 1965 Sheet Metal Workers' Roster at Columbus, Ohio. Therefore, Carrier should restore claimant's name to said roster with seniority unimpaired.

AWARD

Claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of January, 1969.