# Award No. 5697
# Docket No. 5457
# 2-QM&O-CM '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.**

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## PARTIES TO DISPUTE:

## SYSTEM FEDERATION NO. 29, RAILWAY EMPLOYES' DEPARTMENT, AFL - CIO

## GULF, MOBILE & OHIO RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement when it improperly assigned T. R. Thompson to perform Carmen's work, beginning December 17, 1965.

2. That accordingly, the Carrier be ordered to make the Carmen's craft whole by additionally compensating Carmen J. O. Colburn, C. H. Staples, E. D. Coleman, Olis Garner, W. L. Tucker, J. E. Smelley, W. P. Mathews, J. W. Johnson, R. J. Gooden, S. A. Kidd, E. L. Boswell, A. C. Coleman, E. E. Smelley, J. E. Townsend, R. W. Snyder, R. G. Leonard, E. L. Miles, J. L. Black, L. L. Garner, E. L. Fisher, R. E. Fisher, R. L. Boswell and E. R. Beadlescomb at the time and one-half rate for all worked by T. R. Thompson. The above named claimants to be rotated in the order listed for each day beginning December 17, 1965, and continuing so long as this violation exists.

EMPLOYES' STATEMENT OF FACTS: Mr. T. R. Thompson, ex-locomotive fireman, was hired as a carman apprentice December 17, 1965, and began working repairing freight cars on the repair track at Tuscaloosa, Alabama on that date.

Mr. Thompson's date of birth is October 25, 1933. Therefore, at the time he was hired he was 32 years of age. Attached is statement from Mr. Thompson to this effect which is identified as Employes' Exhibit A.

The carmen named in part 2 of our Statement of Claim, hereinafter referred to as the claimants, are regularly employed at Tuscaloosa, Alabama by the Gulf, Mobile and Ohio Railroad Company, hereinafter referred to as the Carrier. The claimants could have, and were available to perform the work on an overtime basis which Mr. Thompson performed.

Billy Boswell, son of Carman R. L. Boswell, is 19 years of age. He contacted the local supervision at Tuscaloosa, seeking employment as carman apprentice some few weeks prior to December 8, 1965, but was told

Carrier has shown without question that it has been unable to secure young men between the ages of 18 and 23 years who are interested in learning a trade, also to secure sons of employees, and that these conditions have necessitated the employment of Apprentices who are beyond the age limit and who are not sons of employees. When this is done, it is always by agreement with the Employees' Representative.

The Employees' General Chairman is thoroughly familiar with all the facts and information as shown herein.

Carrier submits that the instant claims are without merit and should be denied.

(Exhibits not reproduced.)

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.

Petitioner contends that Carrier violated Rules 42 and 48 of the applicable Agreement by refusing to hire the son of an employe as an apprentice on December 8, 1965, and thereafter employing an ex-locomotive fireman as an apprentice on December 17, 1965. Petitioner seeks compensation in part 2 of the instant claim for named Carmen who are regularly employed at Tuscaloosa, Alabama and were available to perform the work performed by the ex-locomotive fireman on an overtime basis.

Carrier contends that Petitioner orally agreed to waive the age limitations for apprentices contained in Rule 42 of the applicable Agreement on October 22, 1965 on order that Carrier might employ one of four displaced Firemen at Tuscaloosa, Alabama, and that a commitment had been made by Carrier to hire an ex-locomotive fireman on December 8, 1965 when the nineteen year old son of a carman applied for an apprentice position. Furthermore, Carrier urges that the son of the carman was subsequently offered the next available position as a carman apprentice on June 23, 1966, which he declined. Finally, Carrier avers that the claim submitted to this Division is not the same claim presented and progressed on the property by Petitioner, and that said claim should be dismissed.

The record discloses that Petitioner withdrew its oral waiver of Rule 42 when the general chairman ascertained that the son of a carman was seeking a position as carman apprentice, and this action by Petitioner occurred prior to the effective date of employment of the ex-locomotive fireman by Carrier. Moreover, Petitioner never agreed to waive the clear and unambiguous language of Rule 48, which expressly provides as follows:

"Preference will be given to sons of employees in the selection of apprentices to the extent of at least eighty percent of the number employed."

Accordingly, we must conclude that Carrier violated the Agreement by assigning the ex-locomotive fireman to a carman apprentice position on December 17, 1965, when a qualified applicant and son of a carman was available for the position.

As to the relief sought by Petitioner herein, it is unrefuted that the work performed by the ex-locomotive fireman was that normally performed by an apprentice, even though he was over the maximum age of 23 years for regular apprentices.

Initially, the claim on the property was filed on behalf of carmen on an overtime basis, or if determined that the ex-locomotive fireman worked as an apprentice, then relief was sought on behalf of other apprentices for each date of violation beginning December 17, 1965 at the straight time rate. When the claim was finally appealed to Carrier's highest designated officer on the property the latter portion of the original claim was changed to read as follows:

"We are claiming eight hours at the straight time rate of pay, in behalf of Billy Boswell beginning December 17, 1965 and continuing as long as violation exists, plus all conditions of employment."

The claim submitted to this Board contains no referral to either the original claim on behalf of other apprentices or the specific request for relief on behalf of Billy Boswell. In fact, Petitioner concedes that the claim on behalf of Billy Boswell was abandoned when this matter was submitted to this Board for adjudication.

In view of the foregoing, we must conclude that the original claim on the property, as modified on appeal to Carrier's highest designated officer has been materially changed, and that no relief is presently sought on behalf of either other apprentices or the individual directly injured by Carrier's violation of the Agreement. Claimants herein are carmen, who were fully employed during the period in dispute, and the work at issue was that normally performed by apprentices at the apprentice rate. Therefore part 2 of the instant claim must be dismissed.

AWARD

Part 1 of the Claim is sustained.

Part 2 of the Claim is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 29th day of May, 1969.

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