



Award No. 5788
Docket No. 5783-I
2-C&O-I- '69

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

W. M. CARDWELL, PETITIONER

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)

DISPUTE: CLAIM OF EMPLOYEES:

I, the undersigned, was employed in the car department of said railroad on March 13, 1951. From July 27, 1955, to July 29, 1963, I served as a painter helper in paintshop. On July 29, 1963, I was promoted to a painter tentative. On January 8, 1965, I was sent back to painter helper and furloughed. I went back to work as a painter helper on April 20, 1966, and on December 20, 1966, I became ill and unable to work. On February 4, 1967, I was cut off. On July 3, 1967, I was recalled to work, but still sick. On August 12, 1967, I returned to work as a painter helper. On October 16, 1967, I was again advanced to painter tentative. On December 23, 1967, I was cut back to painter helper, at which position I am still working. I contend that two other employees were improperly advanced over me, as follows:

A. E. C. Liston was first employed by said railroad as a painter apprentice on June 26, 1963. (In less than one month after his employment I was promoted to painter tentative.) On November 29, 1965, Liston was promoted to painter tentative.

R. P. C. Gerlack was employed as a painter apprentice on July 23, 1963. (I was made painter tentative six days after Gerlach was employed.) On January 3, 1966, Gerlack was promoted to painter tentative.

You will note that both of these men were stepped up from painter apprentice to painter tentative while I was furloughed from my position as painter tentative, having been stepped back to painter helper at the time I was furloughed. Under Rule 177, it is provided in Paragraph 7, as follows: "Apprentices and helpers advanced . . . will hold rights among themselves to new jobs and vacancies . . . in order of the date advanced or employed . . . and for convenience will be designated as mechanics tentative." Paragraph 8 provides in part as follows: "When carmen tentative again are needed, Paragraphs 1 and 3 above will govern for apprentices, and helpers . . . who have previously served as carmen tentative will be given first consideration for readvancement or recall in the same order among themselves as they stood before they were set back or laid off, subject to Paragraphs 1 and 3 above." Paragraphs 1 and 3 are supplemented and controlled by the parts of Paragraphs 7 and 8, which I have above quoted to you.

I am not familiar with the proper method of perfecting this appeal and sincerely request that you treat this as an appeal. If there are any other steps I must take or can take in the perfecting of same, will you please advise me.

CARRIER'S STATEMENT OF FACTS: Under date of December 18, 1968, W. M. Cardwell wrote carrier's shop superintendent at Huntington, W. Va., alleging that he had not been properly recalled to work as painter-tentative ahead of employes P. C. Gerlach and Elmer C. Liston and alleging that all time worked by either Gerlach or Liston should be credited to Claimant Cardwell for the purpose of his establishing seniority as painter and alleging that he had made complaint to his union representative without requested relief. Cardwell stated "this letter is to demand restoration of my full rights, including wages."

Under date of February 12, 1969, carrier's shop superintendent replied to Mr. Cardwell as follows:

"This refers to your letter of December 18, 1968, in which you allege that E. C. Liston and P. C. Gerlach were improperly promoted to painters-tentative and demand restoration of your full rights, including wages.

The record indicates that you were set up from painter helper to painter-tentative on July 29, 1963, set back to helper on January 8, 1965, and cut off. While you were in furlough status as painter-tentative, Liston, who was employed as painter apprentice on June 26, 1963, was set up to painter-tentative on November 29, 1965, and Gerlach, who was employed as painter apprentice on July 23, 1963, was set up to painter-tentative on January 3, 1966. As we understand your letter, you are claiming that before Liston and Gerlach were set up to painters-tentative, you should have been recalled from furlough and been set up to painter-tentative. In this connection, the record indicates that you were set back to helper and cut off on January 8, 1965, as stated above, and not January, 1967, as stated in Section 4 of your December 18, 1967, letter. The record further indicates that you were working as a helper in January 1967, and were cut off as helper on February 4, 1967.

The upgrading of Liston and Gerlach on November 29, 1965, and January 3, 1966, respectively, from painter apprentices to painters-tentative was handled strictly in accordance with the provisions of Paragraph (8) of the Understanding of Rule 177. You will note that Paragraph (8) provides that in force reduction of tentative men helpers will be set back before apprentices, and when tentative men are again needed paragraphs (1) and (3) will govern for apprentices and that the recall of helpers who have previously served as tentatives is subject to Paragraphs (1) and (3). Applying this provision to the instant case, as both Liston and Gerlach had completed more than four periods of their apprenticeship at the time upgraded, Paragraph (1), of the Understanding required that they be upgraded before you were recalled.

In addition to what is said above on the merits of this case, any and all claims intended by your letter of December 18, 1968, are barred under the provisions of Rule 35(d)(1) of the basic agreement since your claim was not filed within 60 days from the date on which the claim or grievance is based, which, in this

days from the date of occurrence on which the claim or grievance was based.

3. Cardwell, a helper, had no right to advancement ahead of apprentices Liston and Gerlach.

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." This was not done with respect to the instant claim before this Board. The subject matter of this claim was not handled with the highest officer of the Carrier designated to handle the grievance.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 4th day of November, 1969.