

Award No. 6213
Docket No. 6015
2-C&O-CM-'71

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)

THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the provisions of the Shop Crafts Agreement were violated June 9, 1969 when J. R. Johnson, who holds seniority at Raceland Car Shop, as Carman (date 8-31-48) and as Foreman (date 6-23-55) was granted a 90 day leave of absence to engage in other than railroad employment, when working as Foreman, without any notification being given to the Carmen's Craft, Local Committee relative to said action in violation of Rule 21.

2. Accordingly, the name of J. R. Johnson should be removed from the bona fide carmen's seniority roster at Raceland Car Shop.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake and Ohio Railway Company, hereinafter referred to as the carrier, owns and operates a large facility located at Russell, Kentucky, known as the Raceland Car Shop, where freight cars are completely rebuilt and new cars are built. Mr. J. R. Johnson, who is employed as foreman at Carrier's Raceland Car Shop with a seniority date of 6-23-55, also carries a date of 8-31-48 on the Carmen's seniority roster.

On April 7, 1969, unbeknown and without any notification to the local committee of the carmen's craft, carrier granted Mr. Johnson a 90 day leave of absence to engage in other than railroad employment. Mr. Johnson was working as Foreman at the time. When Johnson was not working at carrier's Raceland Car Shop and due to the fact that no notification was given to the local committee of the carmen's craft, it was assumed that Johnson could possibly have been absent from work as result of illness, injury or resignation.

When Johnson returned to work June 9, 1969, as foreman, carrier continued to carry his name on the carmen's seniority roster. When it was dis-

Adjustment Board includes Mr. P. R. Humphreys, who holds seniority with this carrier as a machinist at Huntington, West Virginia, such seniority dating from October 4, 1939. Mr. Humphreys was subsequently promoted to foreman, which position is now under the scope of the Foremen and Supervisors Agreement on September 29, 1948. Humphreys was subsequently promoted to a non-contract position May 1, 1952, with his seniority on the foremen and supervisors roster being protected by such promotion under the foremen and supervisors agreement, no question being raised with respect to his seniority under the shop crafts agreement. Upon coming to this Board, Mr. Humphreys secured from the carrier a leave of absence from the carrier, and such leave of absence is renewed yearly, which neither bears or requires the signature of either The American Railway Supervisors Association or The Brotherhood of Railway Carmen.

Although Mr. Humphreys has been a member of the Second Division of The National Railroad Adjustment Board for approximately ten years, no exception has been taken to the fact that he continues to be shown on the Machinists' seniority roster at Huntington, as well as the Foremen and Supervisors' roster. Rule 21, cited by the carmen in support of the instant request, is also applicable to machinists, as well as other crafts, on the property and there is no separate understanding or special rule which would make any distinction in the rule application insofar as seniority under shop crafts agreement is concerned regardless of which of the individual crafts of the shop crafts group is involved.

It will thus be seen that Rule 21, paragraphs (b) and (c), referred to by the Employees, is not applicable and has not been so applied under the circumstances involved in the Johnson case. For this Board to uphold the request of the employees in this case would unduly penalize Johnson by robbing him of his seniority in the carman craft whereby others similarly situated down through the years and under similar conditions have been permitted to retain seniority under the shop crafts agreement. If the employees desire to change the existing rule, or to write a new rule, they have a procedure for so handling and, as well established, such method is not through handling with the National Railroad Adjustment Board. Carrier, therefore, asks that the request as contained in the Employees' Statement of Claim 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 employee or employees involved in this dispute are respectively carrier and employee 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.

J. R. Johnson holds seniority as a Carman at Raceland Car Shop as of August 31, 1948 and as Foreman on June 23, 1955. From time to time Mr. Johnson was furloughed as Foreman, and on each occasion he returned to a

position of Carman. The last date he worked as a Carman was October 4, 1961 and he has worked as a Foreman continuously since then.

On March 25, 1969, while working as a Foreman, and at his request, Mr. Johnson was granted a leave of absence from April 7, 1969 to July 6, 1969 with permission to engage in outside employment. Mr. Johnson resumed his Foreman position early — June 9, 1969.

Employees request that Mr. Johnson's name be removed from the Carmen's seniority roster because "when Johnson left the position of Foreman it was incumbent upon him to return to the position of Carman and take up the duties of such." And in support of this position, Employees invoke Rule 21 (b) and (c), which read:

"(b) An employe absent on leave, who engages in other employment, will lose his seniority unless special provision has been made therefor by the proper official and committee representing his craft.

(c) Leave of absence other than for sickness in excess of 30 days shall be in writing, and copy will be forwarded local committee representing craft."

On March 25, 1969, and immediately prior to April 7, 1969, Mr. Johnson was employed as a Foreman. He was not granted a leave of absence under Rule 21 of the Carmen's Agreement, but, rather, under Rule 7 of the Foremen and Supervisors' Agreement which reads as follows:

"Supervisors may be granted written leaves of absence by their supervisory officers when they are not to engage in outside employment. Leaves of absence to engage in outside employment must have the written approval of the Shop Superintendent or Master Mechanic and the General Chairman."

Johnson's leave of absence was signed by Carrier's officer and by the General Chairman of The American Railway Supervisors Association. Since Johnson was given a leave of absence from his position as Foreman, Carmen's Rule 21 did not apply, and the approval of the Carmen craft committee was not necessary. An "employee" as used in Rule 21 refers to a "Carman", and not a "Foreman".

Employees' concern is understandable. The fewer men there are on the Carmen seniority roster, the more and better opportunities there are for Carmen. If Rule 21 of the Carmen Agreement is applicable then the Carrier would be required to have the approval of both the Carmen Committee and the Foremen and Supervisor General Chairman. But, that is not the meaning and intent which the parties have given to these rules, particularly Rule 21. The record shows, without contradiction, that it has always been the practice on this property that the Foremen and Supervisors Agreement alone applies to those who are employed as Foremen, even though they retain and accumulate seniority as Carmen. All such leaves of absence to Foremen, who were also on the Carmen seniority roster were never before granted leave with the consent and agreement of the Carmen. This is the first time in the many years Rule 21 has been in effect that the Employees have made this contention. There is sufficient vagueness in the term "Employees" as used in Rule 21 to permit acceptable past practice to give it a meaning intended by the parties.

AWARD

Claim denied.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION**

**ATTEST: E. A. Killeen
Executive Secretary**

Dated at Chicago, Illinois, this 2nd day of December, 1971.