Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 7598
SECOND DIVISION Docket No. 7565
2-SCL-CM-'78

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

Parties to Dispute: (System Federation No. 42, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Seaboard Coast Line Railroad Company

Dispute: Claim of Employes:

1. That the Seaboard Coast Line Railroad Company violated terms of the current agreement when they transferred Carman Apprentice E. J. Benson to Waycross, Georgia 129½ hours ahead of Keith J. Fullenkamp.

2. That the Seaboard Coast Line be ordered to compensate Keith J. Fullenkamp one hundred twenty nine and one-half hours (129½) at the applicable rate of his position, also that he be given credit for one hundred twenty nine and one-half (129½) hours applied to his apprenticeship, with apprenticeship seniority date at Waycross, Georgia as of April 27, 1976.

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 dispute here to be resolved arose at a time when the claimant was a Carman Apprentice. His seniority at his "home" location (Lakeland, Florida) dates from February 26, 1974.

The other employe here involved, E. J. Benson, was also a Carman Apprentice. His seniority at his "home" location (Mulberry, Florida) dates from November 25, 1974.

Both men had filled out Form 3100 -- representing an application for filling a vacancy at another of the Carrier's locations if furloughed from the "home" location. The form commences with:

"In accordance with the provisions of Rule 23 (f), I would like to be considered available for employment where vacancies occur in my craft and class at _____
(Show 'All Points' or state preference)"

Both men had inserted "All Points". The claimant had filed the application on September 30, 1975; Benson had filed it on February 3, 1975.

Rule 23(f) of the Agreement reads as follows (we are deleting the last sentence, which makes reference to the form):

"When furloughed men are needed at other points they will upon application be given preference to transfer, with privilege of returning to home station when forces are increased at home station, such transfer to be made without expense to the company, seniority to govern ..."

Both the claimant and employe Benson became furloughed during 1975, and both of them, as transferees pursuant to Rule 23(f), were placed at Waycross, Georgia, sometime in 1976. Benson, however, was placed there a few weeks ahead of the claimant. In exact terms, Benson preceded the claimant to the extent of 129½ work hours. Therein lies the issue here to be determined.

Initially to be noted is that there obviously is no relevance in the fact that the claimant's application was filed later than Benson's. We note this because the record includes a suggestion by the Carrier that the contrary is true. Manifestly, the reference in Rule 23 (f) to "seniority to govern" goes to the employes' relative seniority, not to the date on which the application was filed.

Aside from this suggestion, the Carrier takes a threefold position: 1) that the claimant's application was inadvertently misplaced in the course of effectuating some one hundred placements under Rule 23(f); 2) that Rule 23(f) represents a mechanism of voluntary character and therefore should not be applied in mandatory fashion against the Carrier; and 3) that the Carrier would be improperly penalized if directed to render the payment asked for in the claim.

We are in disagreement with the Carrier.

First, while the misplacement or loss of an application is a wholly understandable event and while we do not mean to chastise the Carrier for it, the accountability for it cannot be shifted away from the Carrier. For, by the scheme of things under Rule 23(f), it is the Carrier who receives

the applications and administers the transfer program. To absolve the Carrier in an instance of an honest mistake would be the equivalent of saying that the employe, who had nothing to do with the mistake and who sustained financial losses from it, must bear the consequences of the mistake.

Second, the Carrier's portrayal of Rule 23(f) as a voluntary mechanism must plainly be rejected as adding up to a misconception. The transfer program is voluntary to the extent that an employe can choose not to sign up under it. But once he files the application, the language of Rule 23(f) unmistakably gives him the right to be placed in accordance with its terms. We view this as self-evident and as requiring no elaboration. To be added only is that "seniority to govern" is among the terms. The requirement was not fulfilled in this instance, and there thus was a violation of the claimant's contractual rights.

Third, in the light of these conclusions, there is no room for viewing the granting of the monetary claim as an act of "penalizing" the Carrier. It is difficult to tell precisely in what sense the Carrier uses the word. But, whatever the Carrier may be conveying, the fact is that, in here sustaining the monetary claim, we are doing no more than making the claimant whole for what he was improperly deprived of -- surely an old-fashioned and long-accepted remedy in the realm of collective bargaining.

Given the fact that the claimant was in the status of a transferee as well as in the status of an apprentice, two further matters need to be dealt with.

In connection with his status as an apprentice, the claimant has asked that the $129\frac{1}{2}$ hours be credited toward his attainment of the journeyman status. We assume that the claimant successfully completed his apprenticeship and is at this stage a journeyman. We state this assumption because we want to show that we do not believe that, for the purpose of the completion of an apprenticeship, hours not worked can be applied as hours worked even where they are hours which would have been worked absent an Agreement violation where they are subsequently made hours covered by wages. As to this much, we think that the preservation of the apprentice program -- meaning the actual putting-in of the specified apprentice hours -- is the overriding consideration. Once the apprenticeship has been successfully completed, however, the hours of which the employe had been improperly deprived must be seen as hours to be credited both for the purpose of seniority as a journeyman and for the purpose of the commencement of journeyman's pay. This, we believe, simply follows from the holding that the hours were hours in which the employe was entitled to be at work and for which he is entitled to be paid. Assuming, then, that the claimant is at this stage a journeyman, we are also directing --

i.e., in addition to directing the reimbursement for the wages lost while Benson was at work ahead of the claimant -- that the claimant's journeyman seniority be moved back by the 129½ hours and that he be retroactively paid at the difference between the journeyman rate and the apprentice rate for the last 129½ hours worked by him as an apprentice.

A W A R D

Claim sustained as and to the extent given in Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 12th day of July, 1978.