

The Second Division consisted of the regular members and in addition Referee John B. LaRocco when award was rendered.

Parties to Dispute: (Wayne McKinney, et al., Petitioners
(Southern Railway Company

Dispute: Claim of Employees:

Whether or not Respondent breached their agreement with the Petitioners regarding employment and advancement.

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.

This claim is brought by twenty-one former or present student mechanics stationed at the carrier's DeButts Yard in Chattanooga, Tennessee. After the claimants commenced their employment, the carrier hired, in July, 1976, five experienced mechanics who were immediately placed in the final phase of the student mechanics' apprenticeship program. In October, 1976, the five experienced mechanics were elevated to journeyman status and attained a seniority ranking ahead of the claimants. The claimants assert that the carrier entered into a "contract of hire" with each of the claimants whereby the claimants agreed to work for the carrier and in exchange the carrier promised that no subsequently hired machinists would surpass the claimants in seniority. As part of the alleged contract, the carrier represented to the claimants that the student mechanic program was the only method to become a journeyman mechanic except in cases of emergency. The claimants contend the carrier breached the contract of hire when the five subsequently hired, experienced machinists attained seniority ahead of the claimants. On the basis of the contract of hire, the claimants urge this Board to make them whole for all benefits lost resulting from the lower relative seniority status of the twenty-one claimants as compared to the five journeyman machinists.

For two compelling reasons, this Board must deny the claims.

First, the claimants concede that there has been no violation of any collective bargaining agreement between the carrier and the International Association of Machinists and Aerospace Workers ("IAM") but relies on the existence of a separate contract of hire. Though there is no evidence (such

as in writing) to demonstrate that a contract of hire was formulated between the carrier and the claimants, such a contract would be void even if it existed. While the claimants have persuasively argued that the contract of hire merely governs the initial employment of the claimants, a more complete analysis of the alleged contract discloses that the claimants are attempting to control the employment conditions of all machinists. Since the claimants contend the contract of hire prohibits the carrier from hiring journeymen mechanics, the contract improperly seeks to establish a critical term of employment (seniority) for all machinists in the carrier's employ. If individual employees could negotiate separate employment contracts with a carrier, the practice would effectively subvert the statutory role of the labor organization as the exclusive bargaining representative for all employees in a unit. 45 U.S.C. 152, Fourth (1970). If the carrier and the labor organization were subject to a myriad of individual agreements, the industrial stability provided by the collective agreement would be shattered. Order of Railroad Telegraphers v. Railway Express Agency, Inc., 321 U. S. 343 (1944). The unavoidable conflict between individual agreements is apparent in the instant case. The IAM, properly exercising its authority as the exclusive bargaining representative of all machinists, entered into agreement dated October 4, 1976, which permitted the five experienced machinists hired after the claimants to advance from Phase IV of the student program to journeyman status. In exchange, the five journeymen received compensation at the mechanic's rate and a seniority rank effective from July 16, 1976. Given the prior work experience of the five mechanics and the carrier's urgent need for mechanics, the agreement of October 4, 1976 was of mutual benefit to the carrier and the organization. This modification of the collective agreement was made pursuant to Section 2 of the Railway Labor Act, 45 U. S. C. 152, Seventh (1970).

In addition, the claimants' agreement of hire, if upheld by this Board, would directly conflict with the seniority terms of Rule 65 in the governing agreement between the IAM and the carrier as well as Section 5 of the February, 1974 Student Mechanic Training Agreement. The individual contracts cannot vitiate the collective provisions without undermining the structure of collective bargaining. Second Division Award No. 186 (DeVaney). Therefore, to resolve the irreconcilable conflict between the collective bargaining agreements and the terms of any contract of hire, railroad labor policy mandates that any contract of hire must fall.

Second, the applicable sections of the collective bargaining agreement allow the carrier, regardless of an emergency, to hire either journeymen or student-mechanics at its discretion. By the clear language of Rule 65, three years of experience in the machinist trade plus a showing that the machinist is capable of servicing a locomotive are prerequisites to the hiring of a journeyman machinist. The claimants have not challenged the qualifications of the five subsequently hired employees. The record is replete with evidence that the five experienced machinists complied with the prerequisites. The carrier actually tested them during a trial period to see if the five machinists could competently service diesel locomotives. Thus, there has been no violation of Rule 65 or any other term of the collective bargaining agreements and this Board must deny all twenty-one claims.

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Award No. 8331
Docket No. 8210-I
2-SOU-I-'80

While this Board has heard the claims of the student mechanics on the merits, the record reveals that the claims were filed with this Board after the expiration of limitation period in Rule 35(a)(3) of the controlling agreement. Second Division Award No. 6197 (Quinn).

A W A R D

The claims are denied.

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 16th day of April, 1980.