

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

Parties to Dispute: { International Brotherhood of Firemen and Oilers
{ Southern Railway Company

Dispute: Claim of Employees:

1. That the Southern Railway Company violated Rule 24(d) of the controlling agreement as amended effective March 1, 1975, when they arbitrarily withheld Laborer C. H. Boles, Coster Car Shop, Knoxville, Tennessee, from reporting to a regular position on September 8, 1980, without affording him a proper notice of recall.
2. That accordingly, the Southern Railway Company be ordered to compensate Laborer C. H. Boles in the amount of eight (8) hours each at the pro-rata rate for each of the days, September 8, 1980 through January 5, 1981 inclusive that he could have worked had he been given a proper recall notice.

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 Claimant, Laborer C. H. Boles was employed as a Fireman and Oiler at the Carrier's Coster Shop at Knoxville, Tennessee on December 5, 1979. In April of 1980 Mr. Boles entered the Carrier's training program as a Carman Student Mechanic at its McDonough, Georgia Training Center. By letter dated June 2, 1980 Mr. Boles was notified by Carrier's Assistant Vice President Personnel Administration, Mr. Hedberg, that due to prevailing general economic conditions he would be furloughed at the conclusion of his Carman training at the McDonough Training Center. Mr. Hedberg also advised that:

"... Those of you who hold seniority in other crafts may wish to advise your local employing officer that you intend to exercise that seniority at the termination of your training.
..."

The instant claim, filed on February 27, 1981, contends that after his furlough, Mr. Boles contacted the Coster Shop office on June 9, 1980, and was told

that he did not stand for work, and that upon his return to work as a Fireman and Oiler on January 6, 1981 he became aware that Fireman and Oiler employes junior to him had been working prior to his return to service. Mr. Boles asked that he be reimbursed for lost time "from the time the first man with less seniority than myself was called back to the time that I was called back".

Mr. R. H. Bible, the Carrier's Shop Manager, declined the claim on April 1, 1981 stating that there was no record of Mr. Boles ever advising that he wished to exercise his seniority as a Fireman and Oiler, Mr. Bible further stated that:

"... the first notice I was given was on January 5, 1981 when, with your committeeman W. T. Heath, you presented a letter from R. D. Hedberg stating that you were to contact your employing officer that you wanted to exercise your seniority in your old craft."

By letter dated August 4, 1981 while the dispute was being handled on the property, the Coster Shop Chief Clerk, Ms. B. J. Doffee stated as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that C. H. Boles did not contact this office in regard to re-establishing himself as a Laborer at the time of his furlough as Student Carman on June 6, 1981 until January 5, 1981. On January 5, 1981 Mr. Boles expressed his desire to return as a Laborer and presented this office with a letter from Mr. R. D. Hedberg, dated June 2, 1980, stating he could contact his employing officer and advise that he intended to exercise his seniority in old craft. Mr. Boles did not express this desire until January 5, 1981, and was then put to work January 6, 1981 as a shop laborer.

/s/ B. J. Doffee
Chief Clerk Coster Shop"

The record shows that Mr. Boles was furloughed while in training as a Student Mechanic within the Carmen's craft. Since he was furloughed while working within the Carmen's craft, the Carrier was responsible under Rule 24 of its Agreement with the Carmen's Organization to notify him to return to service as a Carman when carmen forces were restored. However, the Carrier was not responsible for automatically recalling him to service as a Fireman and Oiler.

Rule 153 of the Agreement between the Carrier and the International Brotherhood of Firemen and Oilers concerns the promotion of Firemen and Oiler employes to other crafts. It states as follows:

"Rule 153. Employees of the Firemen and Oiler Class promoted to positions in other crafts shall retain and continue to accumulate seniority in the Firemen and Oilers Class for a period of ninety (90) days from the date of promotion. If such employee returns to the Firemen and Oilers Class prior to expiration of said

period for reasons beyond his control, he shall be privileged to exercise a displacement right within ten (10) days from the date so affected under the provisions of Rule 26."

When Mr. Boles was furloughed as a Carman Student Mechanic, he was entitled to exercise a displacement right if he so desired. However, it was incumbent upon Boles to decide if he wanted to exercise his seniority as a Fireman and Oiler; and Mr. Hedberg's letter dated June 2, 1980 advised him that he should notify his local employing officer if he intended to exercise seniority in another craft.

As set forth previously, Mr. Boles contends that he be contacted the Coster Shop Office on June 9, 1980. The Carrier's Shop Manager and Chief Clerk differ with the Claimant on this point as set forth above. It is well settled that this Board does not resolve conflicts in evidence. Both Mr. Bible and Ms. Doffee state that it was not until January 5, 1981 that Mr. Boles appeared at the Coster Shop Office making reference to Mr. Hedberg's June 2, 1980 letter, seeking to exercise his seniority to his old craft. We have no way of breaking the deadlock in positions on the facts at this distant Board. And, we point out that the Organization presented no further evidence on the property such as corroborating statements from individuals who may have seen Mr. Boles at the office on June 9, 1980. In order for this Board to consider sustaining the instant claim the Organization would have to show that Mr. Boles notified the Carrier on June 9, 1980 of his desire to exercise his seniority as a Fireman and Oiler. This the Organization did not do. Therefore, we must deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Acting Executive Secretary
National Railroad Adjustment Board

By 
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of July, 1983.