

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISIONAward No. 12898  
Docket No. 12694  
95-2-93-2-56

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

PARTIES TO DISPUTE: (International Association of Machinists and  
( Aerospace Workers  
(  
(Norfolk and Western Railway Company

STATEMENT OF CLAIM:

- "1. That the Norfolk & Western Railway Company violated the controlling Agreement when they unjustly recalled to active service from furlough a junior Machinist and by doing so bypassed senior Machinist R. N. Howard, thereby violating Rule 26, but not limited thereto.
2. That accordingly, the Norfolk & Western Railway Company be ordered to pay Machinist R. N. Howard for all lost time - eight (8) hours per day, five (5) days per week for a total of 40 hours per week - beginning February 7, 1991 and ending on the date Machinist Howard was returned to active service. Further, that all his rights during he period be unimpaired."

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 waived right of appearance at hearing thereon.

The case at hand essentially rests on a question about the Claimant's status at a time when he was not an active employee on the Carrier's roles because he had been dismissed for cause. Specifically, the Claimant had been employed and assigned to the Carrier's locomotive shop at Shaffers' Crossing, Roanoke, Virginia. On February 16, 1990, he was dismissed from the service based on a finding of guilt to a charge of insubordination.

The matter which caused this specific claim to arise occurred on February 7, 1991. On that date, the Carrier recalled Machinist K. R. Brooks ("Brooks") to active service from furlough. Brooks had a seniority date of November 20, 1974.

Subsequently, the Claimant was restored to the service at the Carrier's Roanoke facility on June 26, 1991 as a result of the disposition made by Public Law Board No. 5042, Award No. 4, dated June 25, 1991.

The core contention advanced by the Organization is that the Carrier breached Rule 26 - Seniority, because it failed to recall the Claimant according to seniority. The Claimant has a seniority date of November 8, 1973 and Brooks has a seniority date of November 20, 1974. Accordingly, on its face, Brooks is the junior employee and the Organization argues that the Claimant should have been recalled before Brooks. This contention rests on the ruling in Award No. 4 cited above.

In pursuing this claim, the Organization relies upon language contained in the Carrier's letter of February 16, 1990 that dismissed the Claimant. In pertinent part, that letter stated: "you are hereby dismissed from all services of the Norfolk and Western Railway as a Machinist at Shaffers' Crossing Locomotive Shop." The Organization argues that the Claimant was dismissed as a Machinist at Shaffers' Crossing, not at Roanoke Locomotive Shop (emphasis added). Therefore, it argues that the Claimant continued to have an employment relationship with the Carrier because the dismissal was confined to the Shaffers' Crossing location. Accordingly, given the respective seniority dates, the Claimant should have been recalled on February 7, 1991, according to the Organization.

The Carrier counters the Organization's claim that the Claimant was dismissed at only one location as a total misreading of the Carrier's dismissal letter. It submits that the dismissal letter must be viewed in its entirety and as to its clear intent. It asserts that it would be "ludicrous" to interpret the February 16, 1990 dismissal letter in such a way as to apply it to a single mechanical facility.

Addressing the question of whether the Claimant was dismissed only from his duties at Shaffers' Crossing, we find no support for the Organization's position. Indeed, the February 16, 1990 letter clearly demonstrates that it was the Carrier's intent to entirely sever the Claimant's employment relationship with the Carrier. Clearly, the Carrier instructions in the dismissal letter, such as the matter of returning Company's tools and equipment and contacting the Railroad Retirement Board concerning unemployment benefits, demonstrate that the Claimant was dismissed from all service. As held in other Awards, in order to exercise seniority rights, there must be an existing employee-employer relationship between the parties. At the time that Brooks was recalled February 7, 1991, the Claimant did not have an active employer-employee relationship because he was dismissed and, therefore, under those circumstances, did not have any seniority rights under Rule 26.

Moreover, the Board notes that the Claimant was "reinstated without back pay, but with no loss of seniority" by Award 4, PLB No. 5042. The Board found the Claimant "guilty of insubordination as charged." It further held that the "discipline imposed to be excessive" and the dismissal was reduced "to a suspension without pay."

We find no contractual basis, nor has one been provided, that would lead to a conclusion such as advanced by the Claimant. He had no contractual rights to hold a position until his return to service on June 26, 1991, because he was in a "suspension" status as conveyed by Award 4. Therefore, he would not have been available for service.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.