

Award No. 194

Docket No. 184

2-CRI&P-MA-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Machinist W. E. Simcoke has no seniority rights at Peoria, Illinois. On May 2, 1936, Machinist W. E. Simcoke transferred from Shawnee, Oklahoma, to Armourdale, Kansas, working at that point about eight months, until January 3, 1937, and, therefore, lost his seniority by disregarding Rule 20 of the agreement, effective October 1, 1935.

STATEMENT OF FACTS: Machinist W. E. Simcoke entered the service of this carrier at Peoria, Illinois, as a machinist September 15, 1922. Under contract in existence on February 3, 1934, Mr. Simcoke was placed on position of motor car maintainer at El Reno, Oklahoma. He worked on this and similar positions at Shawnee, Oklahoma City, and Armourdale until January 7, 1937, when he returned to position of machinist at Peoria, Illinois.

POSITION OF EMPLOYEES: Machinist W. E. Simcoke forfeited his seniority at Peoria when he reported to Foreman Kooken September 28, 1935, and did not return to Peoria to protect his seniority. He did not notify Foreman Kooken, as he had stated he would on September 28, 1935, and disregarded the last paragraph of Rule 22 (Absence from Work).

We submit Foreman Kooken's letter of February 25, 1935, personal record of W. E. Simcoke as Exhibit A.

W. E. Simcoke transferred from Oklahoma City, Oklahoma, to Armourdale, Kansas, May 2, 1936, and remained at Armourdale approximately eight months. Machinist W. E. Simcoke bid on Bulletin 19 of July 29, 1936, on machinist job at St. Joseph, Missouri, and was assigned by bulletin to this job at St. Joseph, August 3, 1936, in line with Rule 17 of the agreement.

We submit Bulletin 19 of July 29, 1936, as Exhibit B.

Rule 30 of the agreement states that machinists hold only point seniority: "Seniority of employes in each craft covered by this Agreement shall be confined to the point employed for each craft."

Machinist W. E. Simcoke for some unknown reason was not sent to St. Joseph, on machinist job that he was assigned to by being the oldest man bidding on this job, and after approximately some 40 days, cancelled his bid on job assigned to by bulletin; therefore, he has no seniority at St Joseph,

Rule 60 provides that motor car vacancies will be filled in accordance with Rule 17 and that at points where cars have never been assigned or maintained, men bidding for the job be given opportunity to qualify as motor mechanics.

Rule 17 provides for bulletining of jobs for five days and for the assignment of a man to such job within five days.

There is no doubt that Rule 60, paragraph 3, was negotiated for the purpose of providing for the motor car situation. There is likewise no question that the "addenda" was abolished by the agreement effective October 1, 1935.

It appears, however, that the carrier purported to act under the authority of the "addenda" despite Rule 60, paragraph 3.

When Mr. Simcoke returned to Peoria on September 28, 1935, he apparently understood the effect of the new agreement. Nevertheless, he complied with an order made by the carrier to return to Shawnee, Oklahoma, and from that time until January 3, 1937, he worked at several different points on the railway as a machinist performing motor car repairs.

Moreover, in July, 1936, Simcoke bid on a machinist job at St. Joseph, Missouri, to which he was assigned August 3, 1936, although for some reason he never assumed his duties at St. Joseph.

At no time was any arrangement made, whereby Mr. Simcoke acted as instructor at any of the points where he worked.

In view of these facts, the conclusion is inescapable that Rule 60, paragraph 3, was not complied with and the other requirements of the existing agreement were not complied with and Simcoke, by his action subsequent to October 1, 1935, lost his seniority standing at Peoria.

We have not overlooked the letter written on September 30, 1935, by General Chairman Dwyer to Assistant Operating Officer Frey, which appears to sustain the carrier's position. In that letter, General Chairman Dwyer stated, "no man is going to lose his seniority who are holding these jobs October 1, 1935." The letter from which this significant sentence is quoted, was at best inaccurate and improvidently written. It must, however, be read in connection with the letter of Assistant Operating Officer Frey, which it purports to answer, and being so read, the two letters must be construed as a whole. So construed, the sentence quoted from General Chairman Dwyer's letter in the light of everything therein contained, does not warrant the carrier in assuming that the effective written rules had been modified.

Letters filled with ambiguous references and couched in generalities even when exchanged between the representative of management and responsible officers of labor organizations cannot be held to alter effective rules. The rules in this case stand unimpeached. So plainly worded are they that competent and careful management could not have misunderstood or been misled. If Simcoke is the victim of bad advice or misplaced confidence, it is extremely unfortunate. We regret that under the circumstances in this case we have no alternative but to conclude that Simcoke forfeited his seniority rights at Peoria and whether misled by advice of his superiors, does not alter the facts.

The claim of the employes must be sustained.

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.

The parties to said dispute were given due notice of hearing thereon.

The carrier violated its agreement with System Federation No. 6 in allowing Machinist W. E. Simcoke to displace Machinist Melicher at Peoria.

AWARD

The claim of the employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of December, 1937.