Award No. 414
Docket No. 420
2-FTW&DC-BM-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 140, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (BOILERMAKERS)

FORT WORTH AND DENVER CITY RAILWAY COMPANY

WICHITA VALLEY RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That D. H. Wood, boilermaker, should be given his seniority rights at Amarillo, Texas, and placed on the daylight job as inspector and paid for time lost, from date he reported for duty after he recovered from an injury received in a wreck on the Colorado and Southern Railway, February 16, 1938, and the five cent differential paid to the inspector over and above the boilermakers' rate.

EMPLOYES' STATEMENT OF FACTS: D. H. Wood was employed as boilermaker at Childress, Texas, on August 26, 1926, and transferred to Amarillo, Texas, on November 1, 1927, and placed on the job as boiler inspector. G. D. Wyre was employed at Childress, Texas, on August 13, 1923, and transferred to Amarillo, Texas, on July 15, 1937, and placed on the night job as boilermaker. On February 16, Mr. Wood was seriously injured in a wreck on the Colorado and Southern Railway while enroute to Denver, Colorado, to be in a conference with the officials of the Colorado and Southern Railway. He (Mr. Wood), being general chairman of the boilermakers on the Colorado and Southern, Fort Worth and Denver City—Wichita Valley, and Burlington and Rock Island Railroads, Mr. G. D. Wyre was placed in Mr. Wood's job while he (Mr. Wood) was off injured. When Mr. Wood reported for work on February 13, 1939, he was told that he was laid off account of reduction in force on August 9, 1938, and Mr. G. D. Wyre had been assigned to job as boiler inspector. However, Mr. Wood was not notified of said reduction in accordance with Rule 22, second paragraph, as follows:

> "Twenty-four (24) hours' notice will be given before hours are reduced. If force is to be reduced forty-eight (48) hours' notice will be given the men affected before reduction is made. Unless employe is notified in writing when laid off that his services are such he cannot be re-employed, he will retain his former seniority date provided he is re-employed within nine months, and passes the required examinations provided he keeps his employing officer informed of his address and any change of address, and reports for service at the earliest possible time, but in no case more than seven days after being notified by mail or telegraph sent to the last address. Failing to report at the earliest possible time he will forfeit all seniority rights."

prove positively unwise. While it might be said that support of the Wood claim would dispose of one seniority dispute, it cannot be denied that it would invite other potential seniority disputes involving a number of employes who in the past have used their original seniority dates as implements of seniority when they have transferred to new locations or to new lists. It might easily jeopardize their seniority and their job security.

This claim is in complete disregard of the words "carry original seniority with them" appearing in Rule 16. We must suppose that it is built on the specious, but actually false, reasoning that because Wood was at Amarillo ahead of Wyre he ranks ahead of Wyre in work-opportunity at that point. Such thinking must be on the theory that when Wood reported for duty on February 13, 1939, then by some magic on that day the seniority date of Wyre, whom Wood found working there, was converted from August 13, 1923, to July 15, 1937 (date of Wyre's transfer to Amarillo) and that by the same questionable method Wood was converted in seniority from a November 15, 1926, date to one of November 1, 1927 (date of Wood's transfer to Amarillo). This is the imaginary scene although these two employes have worked for many years under their present seniority dates. Seemingly, the claim is inspired, with only one individual fellow employe, Wyre, in mind, and the claimant, blinded to other possibilities, is willing to have fourteen years of that employe's seniority thrown away and sacrifice about a year of his own seniority to attain the end that is sought. If "original" seniority does not mean an August 13, 1923, seniority date at Amarillo for Wyre, and a November 15, 1926, date at Amarillo for Wood, then for the sake of argument, what does it mean?

An award sustaining this claim would do such violence to Rule 16 as to create a bewildering situation. It would raise new and fresh questions and provide no answers to them. It would instantly becloud and place in jeopardy the seniority dates and hence job security of many other employes, transferred under Rule 16, over a period of seventeen years, who are not parties to this dispute and who may not even be aware of it. On the very first occasion of an assertion of seniority by one such transferred employe there might easily arise a question of a right to do so that might prove more serious and more far reaching than the question in the instant claim. Then, too, an award that would have the effect of declaring Wood senior at Amarillo to Wyre would raise questions as to future method of application of Rule 16. For example, if an employe were transferred from one point to another point, what would be his seniority date at the new point if he were not permitted to take his original seniority date with him? Would he instantly lose his original seniority date, or would he have a certain period of time in which to return to the original point without loss of seniority, and if he had such a protective corridor of time what would be its width, thirty days, sixty days, or what? These questions are not answerable because they are not found in Rule 16 for the reason that it is not that kind of a rule. They are put here only as further convincing argument that the D. H. Wood claim and request is utterly without merit, has a very insecure background, and has no support whatever under the rules and accepted practices thereunder.

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 rules of agreement are not clear as to the intent of the parties where men are transferred from one point to another. Considerable evidence was introduced by the parties, intending to show the accepted practices in effect, but both were in sharp disagreement over the facts.

The Division, therefore, concludes that the solution of the difficulty lies either in the negotiation of a new rule or an agreed-to interpretation clarifying the present rules.

AWARD

Case dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 20th day of December, 1939.