

Award No. 640

Docket No. 627

2-T&P-CM-'41

**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. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the current agreement was violated when V. E. Cook and C. C. Irvine were furloughed March 1, 1940, junior Carmen R. A. Key and C. R. Parker were retained in service. V. E. Cook and C. C. Irvine be compensated for all time lost or equal amount of money earned by junior Carmen R. A. Key and C. R. Parker.

EMPLOYEES' STATEMENT OF FACTS: On February 27, 1940, a bulletin was posted at Marshall shops showing the names of thirteen carmen that were being cut off by reduction in force. The four oldest carmen were V. E. Cook, C. C. Irvine, R. A. Key and C. R. Parker.

February 28, a bulletin was also posted asking for bids on the car checking job and third trick inspector's job, these two jobs were being worked by R. A. Key and C. R. Parker. At the close of day's work March 1, Cook and Irvine ceased to work although Key and Parker were retained in service, and on March 4, assigned to the same jobs bulletined.

POSITION OF EMPLOYEES: Since the name of Parker and Key appeared on the bulletin of February 27, 1940, along with eleven other men, they were out of service the same as Cook and Irvine, who considered themselves out of service.

That on the morning of February 28, the company found that they wanted the two preferred jobs of Parker and Key worked. Then they should have reduced the number of men to be furloughed from thirteen to eleven or they should have called the two oldest men back to service; which was Cook and Irvine. This would have been in compliance with Rule 18 (C). Rule 18 (C) reads:

(C) Twenty-four (24) hours' notice will be given before hours are reduced. If forces is to be reduced seventy-two (72) hours notice will be given the men affected before reduction is made and list will be furnished the local committee. In restoration of forces senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former positions if possible. Fifteen (15) days to be considered as reasonable time, for which to report for duty.

"The carrier desired to make a reduction of four men in its force, but to retain six men on truck repair work. To accomplish this end, ten junior men were furloughed and jobs for six truck repair men were bulletined. . . . Complainants Smith, Felder and Cothorn could have remained in the service, if they had bid for the jobs, because they were senior to three of those selected. . . . These men did not bid for the jobs and, consequently, three men of lower seniority were given the positions.

The carrier had the right to reduce its forces and to retain men in positions which its work required. It needed carmen for truck repair work only, but if it had retained its carmen, working in truck repair work only, it would have retained junior men and deprived senior men of their rights. Instead, therefore, of furloughing four men, it furloughed ten junior men and bulletined jobs for six as carmen for truck repair work only, thus enabling the senior employes, who would be affected, to bid on the jobs that were to be retained. The complainants in this case did not take advantage of the opportunity to bid on the jobs that were to be retained, and the carrier assigned those men who did bid for the work to the jobs.

AWARD

The claim is denied."

The above findings of your Board in its Award 269 fit the circumstances in this case identically as shown by the carrier's statement of facts.

There is no question but what the claimants were thoroughly familiar with the fact that these positions were under bulletin and had opportunity to bid on them had they so desired, and it is an agreed to fact that they did not do so as shown in Assistant Vice President James' letter to former General Chairman Nichols of August 3, 1940, copy of which I am submitting as Exhibit A and would call particular attention to the 4th, 5th and 6th paragraphs of that letter, reading:

"These two positions, Car Inspector and Car Checker, were advertised in accordance with Rule 10 and the senior men bidding on them were assigned in accordance with that article, which specifically provides in part:

'Employes desiring to avail themselves of this rule will make application to the official in charge and a copy of the application will be given to the local chairman.'

It is an agreed to fact that neither Cook nor Irvine bid on these jobs which they knew were under bulletin and they also knew that they were being cut off the following day, indicating beyond question of a doubt that they did not want these jobs."

which is further confirmed by Superintendent of Shops Weber's letter to Secretary McCauley of March 20, 1940, copy of which is submitted as Exhibit B, which clearly shows that the claimants were not only conversant with the bulletin but were furnished a copy thereof, and that they did not bid on the jobs.

Would also call attention to the fact that the handling in this case was in line with the agreed to understanding as reached with the Committee in 1939, shown in the 7th and 8th paragraphs of Assistant Vice President James' letter to General Chairman Nichols of August 3, 1940, our Exhibit A.

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.

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

Cook and Irvine should have been assigned to the available position in accordance with seniority rights, reasonable opportunity being first given to establish qualifications as specified in Rule 85.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.