

Award No. 1196

Docket No. 1127

2-CofG-CM-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 26, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L.—CARMEN**

CENTRAL OF GEORGIA RAILWAY COMPANY

M. P. Callaway, Trustee

DISPUTE: CLAIM OF EMPLOYES: That Foreman R. A. Howell forfeited his seniority as a mechanic in Albany seniority district when he accepted transfer to position of Derrick Foreman at Macon, Georgia, which is a separate seniority district.

JOINT STATEMENT OF FACTS: R. A. Howell was employed on January 25, 1923, as car inspector at Albany, Georgia, and worked as such until July 6, 1933, when he was appointed rip track supervisor, and held this position until April 1, 1934. He was then appointed car foreman at Albany, which position he held until January 1, 1941, when he accepted appointment as wrecker and car foreman at Macon shop (which is a separate seniority district) and held this position until January 16, 1943, at which time he was demoted, returning to Albany with seniority as of his original date of entry into the service, or January 25, 1923.

POSITION OF EMPLOYES: It is the position of the employees that, in accordance with Rule 11 of the Central of Georgia Railway Shop Agreement, effective December 1, 1936, which reads—

TRANSFERS. Employees transferred from one seniority point to another with a view of accepting a permanent transfer, will after thirty (30) days lose their seniority at the point they left, and seniority at the point to which transferred will begin on date of transfer. Seniority to govern, fitness and ability being sufficient. Employees will not be compelled to accept a permanent transfer to another point.

Mr. Howell forfeited his seniority as a mechanic at Albany when he failed to return to Albany within the thirty days as stipulated in the rule, and that his proper seniority date is the date he returned to Albany, or January 16, 1943. It is the employees' contention that Rule 11 fails to mention that foremen are excepted under this rule and, therefore, it applies to all employees alike.

POSITION OF CARRIER: While there has been quite a number of mechanics in all shop crafts promoted to foremen, later demoted to the

ranks of mechanics and given original seniority date as mechanics, these have not moved from one seniority district to another as in the above claim; and in the absence of any rule, whatsoever, protecting the seniority of mechanics promoted to foremen, and as the shop craft committee has not protested the protection of seniority for these men, the carrier followed the same practice in this case and allowed Mr. Howell seniority at Albany when he was demoted at Macon, back to the original date of his entry into the service as car inspector at Albany.

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 Board has heretofore stated that it is reluctant to take away earned seniority from an employe. There was no rule in the agreement protecting seniority rights of an employe when promoted to a foreman as in this case. In this case there were a number of previous instances cited on this carrier where employes had had their original point or district seniority respected and protected when promoted or transferred to another position at the same point or on the same district, only one case being cited that might be considered comparable to the case at issue—that is, that of an employe leaving his point or district seniority territory and taking promotion to a position at a point or district where another seniority roster was in effect. In the latter case, it was also shown that the employe involved made arrangements, or had an understanding, before being transferred to the new point to protect his seniority at the old point.

In this case, we find that there were no exceptions made to Rule 11 of the working agreement. It reads:

“Employes transferred from one seniority point to another with a view of accepting a permanent transfer, will after thirty (30) days lose their seniority at the point they left, and seniority at the point to which transferred will begin on date of transfer. Seniority to govern, fitness and ability being sufficient. Employes will not be compelled to accept a permanent transfer to another point.”

In consideration of the oral and written evidence presented at the hearing, and submitted in this case, the claim should be sustained.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 16th day of May, 1947.