

Award No. 1226

Docket No. 1157

2-T&P-CM-'48

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

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carman Helper W. J. Sawyer was improperly laid off effective at the close of his shift on December 10, 1946, under the current agreement, and that accordingly the carrier be ordered to reimburse him for having been laid off without proper notice in the amount of four days, of eight hours each, at his applicable pro rata rate.

EMPLOYEES' STATEMENT OF FACTS: The carrier employed W. J. Sawyer as a carman helper, June 1, 1946, at Dallas, Texas, and on November 11, 1946, he was regularly assigned on the repair track during the hours of 8 A. M. to 4:30 P. M. This employe remained in the service on said assignment until the close of his day's work on December 10, 1946, at which time he was then and there informed by the foreman that he was laid off. This is confirmed by the copy of letter submitted, dated December 11, 1946, addressed to the general car foreman by Local Chairman Freeman, identified as Exhibit 1.

The agreement effective April 1, 1943, as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is an indisputable fact that this employe established seniority as a carman helper on June 1, 1946, in conformity with Rule 20 (d), which reads—

"The seniority of employees will date from time pay starts when employed."

By virtue of the fact that Mr. Sawyer was regularly employed as a carman helper, he was not subject to be laid off, except in accordance with the expressed provisions of Rule 18, captioned, "Reduction of Forces" and, therefore, since he was laid off without the proper required notice explicitly provided for in paragraph (b) of this rule, reading—

"Four days' notice will be given employees affected before reduction is made and lists will be furnished to Local Committee."

it is obvious that this employe was deprived of at least four days' work, absolutely inconsistent with this quoted provision of the rule.

the "Case of Carman Helper W. J. Sawyer, claiming four days at his Helper rate of pay, account of having been furloughed December 10, 1946, at Dallas, Texas without being given the required four days' notice in line with Rule 18 (b) of current agreement."

It was clearly brought out at the conference that there was no reduction in force in this case that would involve Rule 18 (b), your attention being called to the fact that that rule covers reduction of force—and there was no reduction of force. There was the same number of men employed at Dallas prior and subsequent to December 10th. This was a case of a man being displaced by another man exercising seniority.

At conference you referred to Award 252 of the Second Division, National Railroad Adjustment Board. But in that case there was a reduction in force.

Please be referred to Awards 558, 561 and 639 of the Second Division of the National Railroad Adjustment Board.

Decision as given you by Mechanical Superintendent Dix, his letter of February 7th, is sustained.

Yours truly,

(Sgd) B. C. James
Assistant Vice-President.

And we did not understand there was any dispute as to those facts and supposed the decision as rendered had disposed of the case, as nothing to the contrary was heard from Mr. Crumpton.

The employes cited, in conference with the carrier, Award 252 rendered by your Board. However, it will be noted that that award involved a case where a force reduction was made.

Awards 558, 561 and 639 of your Board, to which the general chairman's attention was called, denied cases similar to the one at issue, the findings of the Board being in part as follows:

"The force, in the instant case, was not increased or reduced, and, therefore, it was not necessary under these circumstances to give the employes involved in this case four days' notice before they could be laid off."

Those findings fit the case now before the Board and would deny the claim.

Exhibit A, submitted, is copy of Mechanical Superintendent Dix's letter of February 7, 1947, to General Chairman of Carmen Crumpton.

Summing up this case, we have the following:

1. There was no force reduction in carmen or helpers at Dallas car department on December 10, 1946.
2. Rule 18 of current agreement does not apply—there was no force reduction.
3. There is no rule in agreement with employes that would sustain their claim.
4. Sawyer was displaced by a senior carman helper, in line with Rule 37 (a) of current agreement with System Federation No. 121.
5. Sawyer was the youngest carman helper in point of service at Dallas on December 10, 1946, when displaced by a senior man.

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.

Carman Helper Sawyer was notified at the end of his day's work on December 10, 1946, that he was "laid off." Rule 18 (b) reads "Four days notice will be given employes affected before reduction is made and lists will be furnished to local committee."

The required notice was not given to Sawyer.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of January, 1948.