Award No. 1399

Docket No. 1321

2-D&RGW-FO-'50

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee E. B. Chappell when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 10, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Firemen & Oilers)

THE DENVER AND RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the current agreement William H. Cameron forfeited his seniority as a fireman and oiler on the Utah Junction and Burnham seniority rosters as of March 4, 1949, and that accordingly his seniority date be ordered changed to begin on June 6, 1949.

EMPLOYES' STATEMENT OF FACTS: William H. Cameron was regularly employed by the carrier at Utah Junction, Colorado, as a locomotive crane operator prior to March 4, 1949.

The carrier rented, leased or loaned its locomotive crane, operated by Mr. Cameron, to the Commercial Metals Company of Dallas, Texas, to use in connection with loading scrap, etc., resulting from the dismantling of tracks continuous to the carrier's own Midland tracks at Colorado Springs, Colorado, and the carrier arranged with the contractor to employ Mr. Cameron to operate this crane. Mr. Cameron accepted such employment with the contractor at Colorado Springs with and under the directions of the contractor during the period of March 4 until he returned with the crane to his home point on June 6, 1949.

The agreement, effective June 16, 1943, is controlling.

POSITION OF EMPLOYES: Provisions of the aforementioned agreement provide as follows:

1—Rule 12 (A) reads:

> "Seniority begins at the time the employe's pay starts, providing application is approved. Seniority rights shall be confined to the point where employed, separately for each Classification group designated as (A), (B) and (C) in Rule 1."

2—Rule 19 (A) reads:

> "When the requirements of the service will permit, employes, on request, will be granted leave of absence for ninety (90) days, with

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 question presented is whether or not employe William H. Cameron, having seniority on the firemen and oilers' roster as of September 24, 1929, forfeited such seniority on March 4, 1949, for violation of Rule 19 (a).

In that connection the record discloses that such employe was regularly employed by the carrier at Utah Junction as a locomotive crane operator. During February, 1949, the carrier having a locomotive crane available for a short period of time, leased it to a contractor upon condition that it be operated by an experienced operator. The crane was to be used in loading rail and scrap metal resulting from dismantling the Colorado and Midland Railway Company tracks contiguous to carrier's tracks at Colorado Springs. On or about February 24, 1949, lessee notified the carrier that it was unable to employ an experienced operator. The employe here involved had efficiently operated the crane for a number of years, so the carrier's general foreman, on instructions from the assistant master mechanic, notified the employe that he would be required to go to Colorado Springs and operate it.

Thereupon the employe tried to contact the general chairman of the firemen and oilers but was unable to do so. He then contacted the local committeeman representing the organization, who, in the presence of the carrier's general foreman, assured the employe that such "organization would have no objection to his working on this crane at Colorado Springs and that his seniority would be protected." An affidavit of the general foreman supporting the foregoing statement said that the committeeman "assured Mr. Cameron that as far as he was concerned there would be no objection and he thought his seniority would be protected."

Thereafter, such employe went to Colorado Springs and operated the crane from March 4, 1949, to June 6, 1949, when both crane and employe were returned, and this claim to forfeit his seniority arose, based primarily upon the contention that before engaging in such employment no special provisions were made therefor "by the proper official and general chairman of his craft."

Rule 19 (a) was negotiated for the benefit of the employes. Its purpose was to protect their seniority rights from destruction by the absolute prerogative of either the carrier or the representative. Seniority rights are property rights, unemployment insurance, contractually purchased and acquired by years of faithful service. Under the principles of equity and justice such rights are as much entitled to protection as any physical property right known to men. In other words, they are of such value and importance that an employe should not through forfeiture be deprived thereof, except in cases where he has wilfully abandoned his work or has clearly and intentionally violated the rules under which he may retain the same. In that connection the rules and evidence must be established beyond question to warrant such action. See Awards 5861 and 11282, First Division. In Award 908 the employe did not have the approval of any representative of the organization.

The employe herein did not wilfully abandon his work, rather he obeyed the carrier's instructions, relying upon his own representative's assurances as any ordinary reasonable man would have done. True there was a technical failure to comply with the rule in that the committeeman gave his approval, as

required in many such agreements, instead of the general chairman. However, the rule was in good faith substantially complied with. Certainly it was not intentionally violated. The organization's representative knowing all the facts led the employe to believe that his seniority would be protected. The organization, then knowing or presumed to know the facts, and whose duty it was to represent the employe and protect his rights, made no protest and gave him no warning until after the service had been completed. Under such circumstances the organization is estopped to declare a forfeiture.

To sustain the claim under such circumstances would be arbitrary, unreasonable and unjust. The Division concludes that the claim should be and is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of July, 1950.