

Award No. 1746
Docket No. MC-1461-80
2-SOU-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

FROY M. LONG (Individual)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEE: The Petitioner, Froy M. Long, has been employed by the Southern Railway Company for twenty-nine years. He has, however, a seniority standing with the company of only September 25th, 1950, and as a result of such standing, he was laid off July 3rd, 1952, upon a reduction in forces by the company. The question upon which an award is desired by Mr. Long, is whether or not he is entitled to his seniority standing dating back to November 26, 1926, instead of September 25, 1950. He would respectfully request his seniority rights be established as November 26, 1926, and be reinstated to his former position if his seniority warrants it.

EMPLOYEE'S STATEMENT OF FACTS: The controlling facts involved in this dispute, as the petitioner believes them to be are:

1. That Mr. Long was employed by the Southern Railway Company in the year 1923, at the Coster yards, Knoxville, Tennessee.

2. That, effective March 1, 1926, there existed and still exists, a collective bargaining agreement between the Southern Railway Company and the Sheet Metal Workers' International Association, of which, Local 163, Knoxville, Tennessee, Mr. Long became a member November 26, 1926, and is still an active member.

3. That on March 9, 1929, due to a reduction in forces by the company at Coster yards, Mr. Long was transferred to Bristol, Virginia as a furlough helper.

4. That on October 5, 1936, Mr. Long was recalled to Knoxville from his temporary position in Bristol, and that he came to Knoxville on October 12, 1936 to take up the call, but had found that he had been dropped from the seniority list.

5. That Mr. Long then returned to Bristol and remained there until 1948, when his shop was abolished, from whence he went to the Clinchfield Railroad at Erwin, Tennessee until 1951 when he discovered that the railroad was employing men younger in seniority than himself at his home point in Knoxville; that after he protested this fact, he was recalled to Knoxville on

On October 5, 1936, the master mechanic at Bristol replied:

"Yours of October 3rd. with reference to Froy Long, Pipefitter Helper.

This employee has decided to remain at Bristol and forfeit his rights at Knoxville. Am attaching hereto copy of his letter of this date with reference to this matter."

The referred to letter read:

"Referring to conversation about being called back to Knoxville.

After due consideration I have decided to remain at Bristol and forfeit my rights at Knoxville."

Copy of this letter, marked carrier's Exhibit A, is submitted herewith and made a part hereof.

Mr. Long continued his employment at Bristol as pipefitter helper, and on February 5, 1944, was set-up to fill position of pipefitter, which he held until June 30, 1947, at which time he was set-back to position of pipefitter helper.

On December 1, 1948, Mr. Long was cut off in a force reduction at Bristol.

On October 15, 1951, Mr. Long was hired as pipefitter helper at John Sevier shop and was given a seniority date of September 25, 1950, pursuant to an understanding reached with employee representatives, reflected in copies of the following letters submitted herewith and identified as carrier's Exhibits B, C, D, E and F:

Letter dated August 27, 1951, from International Representative Baldock to General Chairman Shaver. (Exhibit B)

Letter dated September 15, 1951, from the general chairman to the superintendent motive power. (Exhibit C)

Letter dated September 18, 1951, from the superintendent motive power to the general chairman. (Exhibit D)

Letter dated September 23, 1951, from the general chairman to the superintendent motive power. (Exhibit E)

Letter dated September 25, 1951, from the superintendent motive power to the general chairman. (Exhibit F)

Mr. Long worked as pipefitter helper at John Sevier shop until July 6, 1952, at which time he was cut off in a force reduction. Since that time he, through Attorney Marsh, has endeavored to have his seniority restored at Knoxville, but carrier has consistently declined to take any action in the matter because of the fact that Mr. Long relinquished his seniority rights as pipefitter helper at Knoxville in letter dated October 5, 1936—(carrier's Exhibit A)—and the specific provisions of Rule 30 (c) of the effective Shop Crafts' Agreement.

Under the circumstances, it is evident that on the merits the claim on behalf of Mr. Long is clearly without any basis and should therefore be denied. Carrier respectfully requests, therefore, that the Board dismiss the claim for want of jurisdiction, but if not dismissed that it be denied.

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.

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

The evidence of record shows that this case has not been handled in accordance with the provisions of the Railway Labor Act, Section 3, First (i), nor with the terms of the current agreement.

The rules of procedure of the National Railroad Adjustment Board require that "No petition shall be considered by any division of the Board unless the subject matter has been handled in accordance with the provisions of the Railway Labor Act, approved June 21, 1934."

This Division has previously held in Awards Nos. 514, 1275, 1680, 1718, 1720, 1721, and 1725:

"In order that this Board might assume jurisdiction of a dispute on petition, it must appear that the dispute has been handled in the usual manner in negotiations with the carrier as provided by the statute; and that it is only in case there has been a failure to reach an adjustment in the manner so provided that this Board will review such proceedings. In the instant case there was no compliance with the statute on the part of petitioner. The usual manner of negotiating with the carrier was not complied with. There was no failure to reach an adjustment in the usual manner."

Due to the claimant's failure to pursue the required method of presenting his grievance, this Division of the National Railroad Adjustment Board is without power to pass upon his claim.

AWARD

The Second Division of the National Railroad Adjustment Board having no jurisdiction over the petition in this case, the petition is dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of March, 1954