

Award No. 1833
Docket No. MC-1449-84
2-RDG-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when award was rendered.

PARTIES TO DISPUTE:

MRS. CATHERINE F. DOOLEY (Machinist)

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES: I, Mrs. Catherine F. Dooley, was unjustly removed from the seniority roster of the Reading Company effective March 12, 1952.

My claim of an unjust removal from the seniority roster is based on the fact that I complied in every detail with instructions contained in Exhibits A and B, proof of which is the fact that I have, in my possession, the original receipt of a bid being placed. I now request restoration to my proper position on the seniority roster and full back pay for all time lost as a result of this unjust removal from the seniority roster.

EMPLOYEES' STATEMENT OF FACTS: The labor management agreement, Rule 27, provides for the restoration as well as the reduction of forces. This rule clearly states "Employees called to return to service in accordance with this rule and failing to do so, will forfeit seniority."

I followed all company and union regulations in reporting for service and end up with a dismissal from the seniority roster, hence the claim of unjust removal.

The history of the case is pretty well outlined in the exhibits submitted herewith which have been arranged in accordance with dates. I have been denied proper representation by the union officials charged with the responsibility of administrating the Union contract in my department, therefore I am required to present my own case to the Board. All attempts to settle this affair between the Company and myself have been very discouraging.

I am now asking the Board to hear my case and render a decision. I am prepared to present my case orally before the Board and furnish witnesses who will establish the past practice of the Reading Company regarding the recall of female employes.

POSITION OF EMPLOYEE: I have been an employe of the Reading Company for fifty-two months as a machinist's helper. On February 13,

for restoration of her name on the machinist helpers roster and any question that the action taken was unjust are without merit and unjustified.

With regard to part (2) of the claim, which is for reimbursement of wages lost, carrier submits that paragraphs (e) and (f) of Rule 34 of the shop crafts agreement outline the procedure to be followed in making claims for money payment alleged to be due from any cause. For ready reference, paragraphs (e) and (f) of Rule 34 are quoted as follows:

“(e) Claims for money payment alleged to be due, arising from any cause, may be made only by the employe or the duly authorized local committee on his behalf and must be presented in writing to the employe’s immediate superior within ninety days from date the employe received his pay check for the pay period involved or the basis of the claim occurred; except that time off duty account of sickness, leave of absence or suspension will extend time limits of this paragraph by the period of such time off duty. When there is a claim for money payments alleged to be due based on an occurrence during period employe was out of service due to sickness, leave of absence or suspension, it must be made in writing within ninety days from the date the employe resumes duty.

(f) If claims are not made within the time limits specified in paragraph (e) of this rule, they will neither be entertained nor allowed.”

In the instant case the facts disclose that Mrs. Dooley was advised on March 20, 1952 that she had been closed out of service and her name removed from the seniority roster. There is no record of any action taken by Mrs. Dooley until nine months later, or on December 18, 1952, when she wrote to the superintendent of Reading locomotive shops and requested that she be reinstated on the machinist helper roster and also reimbursed for wage loss. As this monetary claim was not made within the time limits set forth in paragraph (e) of Rule 34, it is the carrier’s position that it should neither be entertained nor allowed.

Part (3) of the claim has reference to charges against the union shop steward. This evidently refers to local committeeman of the machinist organization at Reading, Mr. J. J. O’Connell. While Mr. O’Connell is employed by the carrier in the capacity of a machinist at Reading locomotive shop, his activities as a local committeeman are not within the jurisdiction of the carrier.

Under the evidence and for the reasons set forth hereinbefore, it is the carrier’s position that the practice of notifying furloughed employes when vacancies occur or positions are restored has been in effect for many years, which practice has the concurrence and approval of the representatives of the machinist organization, as well as the representatives of the other crafts covered by the shop crafts agreement. Under this procedure it is considered that the furloughed employes have been notified to return to service in accordance with Rule 27 of the shop crafts agreement. Furthermore, no evidence has been presented to support petitioner’s statement that she had been advised women were no longer employed on the second or night shift or that she had been advised not to bid on second trick positions, nor is there any evidence that the handling and action in this case was unjust or any discrimination or partiality shown. Therefore, carrier maintains the request and claim filed with the Board is without merit and untenable and carrier respectfully requests the Board to deny same in its entirety.

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.

Claimant entered the service of the carrier as a laborer on March 1, 1944, at its locomotive shop at Reading, Pennsylvania. On April 24, 1944, she became a machinist's helper. On March 4, 1946, she was furloughed on account of a reduction of force. On October 10, 1946, she was recalled to service. She was again furloughed because of a reduction of force on February 17, 1949. In February, 1952, five machinist helper positions were restored and advertised for bids. Bulletin No. 52-21 advertised for three machinist helpers on the first trick. Bulletin No. 52-20 advertised for two machinist helpers on the second trick. Claimant was notified of the restoration of these five positions by letter. She bid on the three first trick positions which were bid in by employes senior to claimant. Carrier subsequently struck claimant's name from the seniority roster because she did not bid on the two second shift positions advertised by Bulletin No. 52-20. Claimant asserts that she has been unjustly treated and asks that her name be restored to the seniority roster and that she be paid for all time lost.

Rule 27, current agreement, states in part as follows:

"In the restoration of forces furloughed men will be given preference in returning to service in the order of their seniority, if available within a reasonable time, and shall be returned to their former position if possible.

Employes called to return to service in accordance with this rule and failing to do so, will forfeit seniority, unless excused in writing by agreement between management and general chairman."

According to the carrier, it is the practice on this property to recall a furloughed employe to service by notifying them of the bulletining of restored or new positions. If an employe fails to bid, he is deemed to have failed to return to service on call and his name is dropped from the seniority list. This appears to be an understanding with the Organization, not contained in the schedule agreement or any other writing.

Claimant is not a member of the machinists' organization and has no knowledge of any understandings between the carrier and the organization with regard to the method of recalling furloughed employes to service. The organization is the statutory representative of the claimant. As such, it has authority to make interpretations of agreements that are binding upon this claimant. It is clearly the practice that when an employe fails to bid at all that carrier may strike the employe's name from the seniority roster. This has been done many times in the past and is undoubtedly an enforceable practice. But the record does not show that any situation such as we have here has ever arisen previously on this property. We do not undertake to determine if claimant's case is within the agreed upon procedure between the organization and the carrier, or, whether the organization and the carrier may, by mutual understanding, deprive the claimant of her seniority rights as they did. We shall decide this case on other grounds.

The notice served upon the claimant was as follows:

"You are hereby notified that a position as: 5 Machinist Helpers, 3-7 A. M., to 4 P. M., 2-4 P. M. to 12:30 A. M. See Mr. G. W. Strunk has been restored, and in accordance with provisions of Rule 27 of the Shop Craft Agreement, you will be restored to service providing you make written application for the position that is advertised by Bulletin No. 52-21—3 Machinist Helpers 52-20—2 Machinist Helpers Helping to repair Diesel Locomotives, Rail Motor Cars, Cranes, etc. Reply within 5 days."

Claimant complied with this notice. She saw G. W. Strunk. She made written application for a position that was advertised by the bulletins referred to. She was informed in plain language that if she made written application for a position advertised in the designated bulletins, she would be restored to service. All these things she did. Carrier may not mislead an employe by the notice served and, after the employe has strictly complied with it, deprive the employe of valuable rights under some oral understanding with the statutory representative of which the employe had no knowledge. The carrier is clearly estopped by its own acts from doing so.

Claimant asserts that Mr. G. W. Strunk told her not to bid on the night shift as female employes would not be assigned to it. There is evidence of a corroborative nature in the record that female employes would not be assigned to night shift work. Carrier has not seen fit to rebut this evidence or show why it could not do so. This evidence clearly shows that claimant was induced or encouraged by carrier's agent not to bid on the night shift. This evidence fits into the story told by this claimant. Certainly the carrier may not urge non-compliance with a rule and, after inducing non-compliance, make use of such non-compliance to deprive the employe of valuable rights he was seeking to preserve. Under all the facts and circumstances set forth in this record, the carrier estopped itself from striking the name of this claimant from the seniority roster.

Carrier asserts that it is not liable for a claim for pay for time lost under the provisions of Rule 34, current agreement. This rule limits claims for money payments to a 90-day period prior to the date that claim was made therefor in writing. Claimant made complaint to the carrier for the first time on December 18, 1952. Any claim arising more than 90 days prior to December 18, 1952, is cut off by Rule 34.

Claimant is entitled to be paid for any work arising after her name was improperly stricken from the seniority roster to which her seniority would entitle her to perform, less any earnings made in outside employment during the corresponding days that she was entitled to work as a machinist's helper.

AWARD

Claim sustained per opinion and findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of August, 1954.