

**Award No. 1837
Docket No. 1711
2-AT&SF-BM-'54**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Boilermakers)**

**THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
(Coast Lines)**

DISPUTE: CLAIM OF EMPLOYEES: That in conformity with the current agreement the Carrier be ordered to restore the name of Boilermaker Elmer Wyatt on the Roundhouse Boilermakers' seniority roster at Bakersfield, California.

EMPLOYEES' STATEMENT OF FACTS: Boilermaker Elmer Wyatt, hereinafter referred to as the claimant, was employed by the carrier as a boilermaker in the roundhouse at Bakersfield, California on October 15, 1945 and who remained in the service as such until the carrier made the election to lay him off in a force reduction on August 6, 1951.

The carrier elected to use the claimant as an addition to its force of boilermakers at San Bernardino, California, a distance of about 222 miles from his home point, whereat he entered the service as a boilermaker on August 14, 1951. However, due to the uneconomical conditions associated with such position and which thereby created unsatisfactory conditions in his family of wife and five children going to school, two in high school, it finally became essential for the claimant to discontinue working at San Bernardino on May 9, 1952 and return to his home station at Bakersfield so harmony and peace could be re-established in his family and his home-work life.

The carrier subsequently made the unilateral election to remove the name of the claimant from the seniority roster of boilermakers at his home point and, to date, it has declined to reinstate his name on that seniority roster.

The agreement effective August 1, 1945, as subsequently amended, is controlling.

POSITION OF EMPLOYEES: It is submitted that the foregoing statement of facts and the rules applicable thereto of the aforesaid agreement sustain the contention of the undersigned that the name of Boilermaker Wyatt

again re-enters the service. This does not apply to an employe holding seniority in a single subdivision of a craft, who, after being furloughed, is re-employed in any other capacity than that in which working at the time affected by force reduction, and later resigns as the latter employe will still be subject to recall under Rule 24."

When the force was reduced at Bakersfield and Boilermaker Wyatt was laid off August 6, 1951, he was given consideration in seniority order under the provisions of paragraph (a) of Rule 26 for a position of like nature at San Bernardino, and under provisions of that agreement had his seniority rights at the home point (Bakersfield) retained and also had his name shown on the roster at San Bernardino, with the understanding that if recalled to Bakersfield for a regular position, and refusing to accept such a position and elected to remain at San Bernardino, he would have lost all his seniority at Bakersfield. However, when Mr. Wyatt resigned at San Bernardino, he not only lost his seniority at Bakersfield but that which he had also acquired at San Bernardino. This will be clearly recognized from the last sentence of interpretation placed upon Rule 28 in Memorandum of Agreement No. III, which provides that " * * * an employe holding seniority in a single subdivision of a craft who, after being furloughed, is re-employed in any other capacity than that in which working at the time affected by force reduction, and later resigns as the latter employe will still be subject to recall under Rule 24." In other words, had Mr. Wyatt accepted a position as boilermaker helper or a machinist helper, he could have resigned at San Bernardino without impairing his boilermaker's rights at Bakersfield. However, the facts are that he accepted, under the seniority provision of Rule 26, a position of the same nature at San Bernardino as that which he had occupied at Bakersfield, and under the rule was obliged to remain at San Bernardino until recalled at Bakersfield, at which time he would have had the option of returning to Bakersfield and forfeiting his rights at San Bernardino, or of remaining at San Bernardino and forfeiting his rights at Bakersfield.

Under the above interpretation of Rule 28, there are two conditions in which an employe forfeits seniority in the craft or subdivision of the craft in which employed when furloughed, viz.:

1. That he exercises seniority acquired prior to August 1, 1945, and displaces a junior employe and subsequently resigns, and
2. That after having been furloughed, he is re-employed in the same capacity in which he was working at the time furloughed and later resigned.

Therefore, Wyatt, when resigning his position of boilermaker at San Bernardino on May 9, 1952, automatically forfeited his boilermaker's seniority at Bakersfield. The only way he could get back to Bakersfield without impairment of his rights would have been for him to remain at San Bernardino until recalled under Rule 24, at which time he had the option of either returning and forfeiting his rights at San Bernardino, or remaining at San Bernardino and forfeiting his rights at Bakersfield.

The above, in combination with what Mr. Comer said to Mr. Riddle in letter of September 24, 1953 and contained in "Carrier's Statement of Facts," leave no conclusion to be drawn other than Mr. Wyatt, when he resigned as boilermaker at San Bernardino, May 9, 1952, concurrent therewith severed his employment relationship with the carrier at Bakersfield.

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 Elmer Wyatt was employed by carrier on October 15, 1945 at Bakersfield, California, as a boilermaker. On August 6, 1951 claimant was laid off. This came about because carrier reduced its forces at that point. Thereafter on August 14, 1951 claimant entered the services of the carrier as a boilermaker at San Bernardino, California. He did so under and by authority of the provisions of Rule 26 of the parties' agreement. Claimant worked at San Bernardino until May 9, 1952. On that date, for personal reasons, he quit and returned to Bakersfield. Upon his quitting at San Bernardino carrier removed claimant's name from the boilermaker's roster at Bakersfield. The Boilermakers of System Federation No. 97 contend the carrier was wrong in doing so and ask that carrier be required to restore claimant's name on the Roundhouse Boilermaker's seniority roster at Bakersfield, California, showing his seniority to be October 15, 1945.

Rule 26, pursuant to which claimant was assigned to work as a boilermaker at San Bernardino, is as follows:

"(a) While forces are reduced, furloughed men on a Mechanical Superintendent's territory (Topeka Shop to be considered with Eastern Lines) will be given consideration in seniority order for transfer to other points on that territory where men are needed, providing they can qualify after reasonable trial to handle the work of the vacant position, and will be privileged to return to home point when force thereat is increased; such transfers to be made without expense to the Company.

(b) An employe laid off in reduction of force desiring to secure employment under this rule, must notify his foreman in writing at time laid off.

(c) Employes so transferring shall retain seniority at home point and be shown on the roster at the point to which transferred as of the date of transfer. If recalled to home point for a regular position he shall forfeit seniority at point to which transferred unless he elects to remain at that point in which event he will forfeit his home point seniority."

The only question involved is, did claimant forfeit his seniority rights at Bakersfield when he quit at San Bernardino?

When an employe coming under Rule 26 notifies his foreman in writing at the time he is laid off of his desire to secure employment thereunder carrier is obligated to give consideration to his request for transfer to some other point on the territory of his Mechanical Superintendent where men are needed. While seniority is to be considered by the carrier in making such transfer the employe's right is not one of displacement as carrier is only obligated to transfer him to another point in case men are needed there. An employe so transferred will retain seniority at his home point and will also be carried on the seniority roster at the point to which transferred, the latter to be as of the date of the transfer. Thus the rule provides for employment and seniority roster status with the carrier at two points.

The rule then goes on to provide that if employment becomes available at his home point while so employed he is privileged to return. However, if he is recalled to his home point to fill a regular position he will, under those circumstances, forfeit his seniority at the point to which transferred although he is not required to return to his home point when so recalled but may elect to stay at the point to which he has been transferred. If he does so he thereby loses his seniority at his home point.

It will be observed that the rule does not make any specific provision for what happens to an employe's seniority status at either point in case his services are either voluntarily or involuntarily terminated at the point to which transferred other than when he is recalled to his home point to fill a regular position. Certainly if an employe were no longer needed by carrier at the point to which he had been transferred under this rule and he was therefore laid off because thereof no one could logically contend that because thereof he would lose all of his rights at his home point. Under such a situation it would seem logical that he would retain all his rights both at his home station and those acquired at the point to which he had been transferred. Likewise it would only seem logical that if he voluntarily severed his employment at the point to which he had been transferred that he would retain all of his seniority rights at his home station although forfeiting those he had established at the point where he quit because the rule contemplates such rights are separate and distinct.

Carrier cites Rule 28 of the parties' agreement and relies primarily on an agreed to interpretation thereof. The factual situation here does not come within the provisions of Rule 28, particularly section (f) thereof to which the agreed to interpretation has particular application. Likewise the interpretation has no specific application to the situation herein involved for it relates to employes who have exercised displacement rights and later resign. That is not the situation here.

It is true that by inference it can be said that the interpretation of Rule 28 would infer that if a furloughed employe who held seniority in a single sub-division of a craft were reemployed in the same capacity as that in which he was working at the time he was laid off in reduction of forces, and then resigned the latter position, he would not then be subject to recall under Rule 24. But we do not think such a construction of an interpretation of another rule dealing with a different subject should be here controlling. Seniority rights are valuable to an employe and should not be so easily forfeited.

In view of the foregoing we do not think claimant forfeited his seniority rights at Bakersfield when he quit his employment at San Bernardino.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 17th day of September, 1954.