Award No. 1844
Docket No. MC-1467-85
2-AT&N-I-'54

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

W. W. COATS, INDIVIDUAL—Machinist
(Attorney Dempsey F. Pennington)

ALABAMA, TENNESSEE & NORTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: "An award is sought against either or both the carriers named in this submission ordering reinstatement of Petitioner to the same or similar position from which he was discharged on March 29, 1951, together with full pay from date of discharge to the date of such award or reinstatement, or for other relief to which he may be entitled on final hearing of this cause."

EMPLOYES' STATEMENT OF FACTS: On October 29, 1923, at 8:00 A. M., petitioner was employed by the A. T. and N. Railroad Company in their shops at York, Alabama. Petitioner's duties were to inspect, dismantle, repair, reassemble and test air brakes and do all pipe work on locomotives and cars and maintain pipes and air brakes on all road equipment; to grind, repair and test complete air valves on locomotives and cars, operate air valve test racks and other air brake testing equipment, and maintain air brakes on Diesel engines. Petitioner later had the added duties of transferring gasoline and fuel oil used by Diesel locomotives and oil power equipment. Petitioner was continuously under the direct supervision of the master mechanic at the York shops from the date of his original employment 'til March 29, 1951. During the year 1929, petitioner became a bona-fide charter member of Local No. 654 of the International Association of Machinists and remained such member until about 1950, when that local was consolidated with Local No. 290 at Chaffee, Missouri, and petitioner continued his membership there.

On or about December 28, 1948, the A. T. and N. Railroad Company was taken over, consolidated with, merged or co-ordinated with the St. Louis-San Francisco Railway Company and petitioner continued to be employed in his same capacity at York, Alabama, under the same contract, at the same rates of pay, and under the same working conditions as had existed prior to said combination, until March 29, 1951, when petitioner was dismissed from his employment and his work given to other and younger men.

Petitioner protested his dismissal and attempted to assert his seniority in assignment of work and reinstatement on his job, or another job, but was refused reinstatement and other employment by the carriers. He was not granted any investigation under Rule 38 of the agreement, or otherwise. He was represented by the Association of Machinists in presenting his case to the carriers.

or shop superintendent by the duly authorized Local Committee or their representative within ten days after date of occurrence."

The organization did not dispute the fact that the claim was nullified by Rule 35.

The carrier respectfully requests the Board to find that claim resulting from the abolishment of the air brake man job on March 29, 1951 is null and void account failure to comply with the time limit in Rule 35.

(4) **THE CLAIM IS WITHOUT MERIT ON THE FACTS.**

W. W. Coats was employed as an airbrake man October 29, 1923. His duties consisted of performing air brake work on freight cars, passenger cars (until passenger service was discontinued August 31, 1948), gas-electric motor cars (1936 to 1948), steam locomotive tanks (until steam locomotives were discontinued in 1947), and on two diesel-electric locomotive switchers.

Since about 1948, the only air brake work which he performed was on freight cars and on one small diesel locomotive switcher at Mobile, Alabama. The work on the locomotive comprised principally of semi-annual inspections. He was given certain other miscellaneous duties entirely unrelated to the job of air brake man consisting of: unloading gasoline and fuel oil from tank car to storage tank since the introduction of the gas-electric motor car in 1936 and subsequently the diesel locomotives; what little pipe and sheet metal work remained after the pipefitter job was abolished in August 1950. This company does not operate passenger car equipment and, except for the one small diesel switcher at Mobile, all motive power is Frisco power operated under contract in through service to and from Frisco repair points.

An extensive rehabilitation of the property including equipment and road bed, which had been in a very dilapidated condition, was begun in 1949. As the program progressed the number of derailments and wrecks was greatly reduced and thereby reduced the amount of air brake work. Another contributing factor to the diminishing of this work was the gradual replacement of old "K" type brakes with modern "AB" brakes on the rolling stock.

This air brake work diminished to the point where there was not enough of it, plus the miscellaneous duties, to justify the employment of a man to do air brake work exclusively; in fact, such work would occupy a man less than one-third of his time. Accordingly, the carrier abolished the position effective March 29, 1951. There has been no contention that proper notice of abolishment was not given. Mr. Coats, the occupant of the job, having had his position abolished, was free to use his seniority to displace a junior employe on any position to which his seniority entitled him. However, the fact that he held seniority only as an air brake man restricted him to that type of job of which there were none remaining. He, therefore, assumed the status of a furloughed employe.

The "Reduction-of-Force" rule, which is Rule 27 of the schedule agreement, contains the following sentence:

> "When the force is reduced, the seniority as per Rule 31, will govern, the men affected to take the rate of the job to which they are assigned."

The schedule agreement shows Rule 31 "omitted" and consequently there is no seniority rule in the agreement. It would, however, be contrary to the practice on this property, as it is in the industry, to allow a man to displace a junior employe without regard to craft lines. That is what would have to be permitted here if Mr. Coats were allowed to displace another employe. Seniority rosters have been maintained showing employes for each craft. Mr. Coats was not shown in a craft on any of these rosters.

The air brake job was not a division of the machinist craft nor was Mr. Coats a machinist. The fact that he was a member of the machinists' organization did not in itself make him a machinist nor did it entitle him to seniority as such. He has not been employed by this company as a carman or a machinist nor was he qualified as such. Submitted herewith and identified as carrier's Exhibit Q is a copy of statement made by Machinist (and former local chairman, I. A. of M.) H. R. Mixon, who entered the employ of this company October 18, 1928. This statement supports the carrier's contention that Mr. Coats did not have seniority, as, nor was he considered to be, either a carman or a machinist. It was the carrier's understanding that the machinists had, shortly before the air brake job was abolished, advised Mr. Coats to have his seniority transferred to the machinists' seniority roster and offered to help him do so. Mr. Nixon's statement shows that this offer was made about 1943 and that Mr. Coats declined the offer. This statement definitely illustrates that Mr. Coats not only did not have seniority as a machinist but was fully aware of the fact. He also cannot plead ignorance of the schedule agreement provisions because the Board will observe that he signed that agreement in his capacity as president of System Federation No. 132.

Following the abolishment of the air brake man job such work as remained was assigned as far as possible to employes in the craft entitled to the work under classification-of-work rules in the schedule agreement.

Rule 115, carmen's classification-of-work rule, says "Carmen's work shall consist of . . . pipe and inspection work in connection with air brake equipment of freight cars . . ." and the rules pertaining to schedule of work for carmen apprentices (Rule 133) and helper apprentices (Rule 134) shows these men will spend six months on "air brake work." From these rules it is to be seen that the air brake work which Mr. Coats had been performing on freight cars was in reality carmen's work, and the work has been so assigned since the air brake man job was abolished.

Rule 59, machinists' classification-of-work rule provides "Machinists' work shall consist of . . . air equipment . . . work." Machinists have, even before the air brake man job was abolished, performed the air brake work on locomotives except for the small diesel switcher at Mobile and are doing so today.

Without prejudice to the carrier's position in Items 1, 2 and 3 thereof, the carrier respectfully requests the Board to find that the abolishment of the air brake man job was proper, and within its authority, and that the subsequent assignment of the air brake work was proper.

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 waived right of appearance at hearing thereon.

This Division must conclude:

1. Claimant was employed to perform certain air brake work.

2. This work embraced both machinists' and carmen's work under the schedule agreement and was considered a separate position known as air brake man.

3. Claimant's name never appeared on a seniority roster of either the machinists' or the carmen's craft.

4. The air brake work performed by claimant declined to a point where the Alabama, Tennessee and Northern Railroad was justified in abolishing the position of air brake man occupied by claimant.

5. Under the schedule agreement claimant had no seniority except in the position he held as air brake man; consequently, when that position was abolished he was furloughed.

6. No provisions of the collective bargaining Agreement have been violated.

Claimant asserts that he was adversely affected in his employment due to the consolidation of the Alabama, Tennessee and Northern Railroad with the St. Louis-San Francisco Railway, and that he was, at the time his job was abolished, an employe of the St. Louis-San Francisco Railway and entitled to the protective provisions of the Washington Job Protection Agreement of 1936 and certain protective conditions imposed by the Interstate Commerce Commission in approving the St. Louis-San Francisco and Alabama, Tennessee and Northern transaction.

It would appear that although the St. Louis-San Francisco Railway now owns substantially all of the stock of the Alabama, Tennessee and Northern Railroad and both carriers have a common staff of officers, the two carriers were never merged into one and, therefore, claimant remained an employe of the Alabama, Tennessee and Northern Railroad.

We would feel compelled to hold that on the record before us, claimant, as an employe of a carrier not a party to the Washington Job Protection Agreement, is entitled to none of its benefits except insofar as the employe's representatives can reach an agreement with the carrier involved pursuant to Section 3 of the Washington Job Protection Agreement providing for some type of protection for employes adversely affected in coordinations between party and non-party carriers. Such an agreement was reached, and the protection provided to claimant was $1,000 which he has refused to accept.

In summary, we find that the claimant was furloughed due to the abolishment of the job which he held with the Alabama, Tennessee and Northern Railroad and that the Alabama, Tennessee and Northern Railroad violated no provisions of the collective bargaining agreement in abolishing claimant's job or furloughing him.

AWARD

Claim denied per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 29th day of October, 1954.