

Award No. 1902
Docket No. MC 1526-99
2-WT-I-'55

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

JAMES H. SPROUSE (Petitioner)

WASHINGTON TERMINAL COMPANY

DISPUTE: CLAIM OF EMPLOYEE: The petitioner, Mr. James H. Sprouse, submits to the Honorable Board that he was unjustly deprived of his seniority rights to which he is entitled by reason of the contract agreement between the Washington Terminal Company and the employes of the Washington Terminal Company, represented by the System Federation No. 106, Railway Employes' Department, A. F. of L., which Federation includes the International Brotherhood of Boilermakers, Iron Shipbuilders and Helpers of America, Local 655, of which Local this petitioner is a member. Pertinent portions of this contract agreement are set forth in petitioner's Exhibit "A" annexed hereto.

EMPLOYEE'S STATEMENT OF FACTS: The petitioner began his employment with the Washington Terminal Company on December 11, 1945 as a boilermaker's helper. Due to a need for boilermakers, petitioner was set out with his tools as an "Upgraded Helper" on June 9, 1947, at which time petitioner was told by his union representative, J. F. Pyles, that after he had completed four (4) years as an ungraded helper he would be given a boilermakers rating and that he would then receive seniority in the boilermakers craft. On or about May 1, 1950, a seniority roster for boilermakers was posted on the bulletin board of the Terminal Company, in the Ivy City Roundhouse, Washington, D. C. However, since at this date (on or about May 1, 1950) the petitioner had not completed the required four years in his trade his name did not appear on said roster, nor did he expect his name to appear therein. On November 18, 1953, the petitioner, after being classified as a boilermaker from June 9, 1951 to that date, was assigned as a machinist helper, in a reduction of force shift by the Terminal Company purporting to be in compliance with Rules 22 and 26 of the above noted agreement. Petitioner has been classified as a machinist helper from November 18, 1953 to the present date. In June of 1953, immediately prior to his reassignment as a machinist helper, petitioner was first informed by his union representative of that date, that he had failed to comply with a rule requiring that he notify the union of his intention to be placed on the boilermakers seniority roster, and that because of this failure to so comply, he had lost his seniority rights in the craft and was going to be assigned as a machinists helper. This was the first time your petitioner had ever heard of such a rule, if in fact such a rule ever did exist; and insofar as he has been able to discover to the present date no other employe in his craft knew or was aware of such a rule. Moreover, he was first informed of this alleged rule after he had served more than two (2) years in the craft (boilermaker)

tion for transfer from the helpers' roster to that of the boilermakers. The practice is consistent with Rule 26(b) which limits seniority "to the craft and class in which employed." Sprouse's "craft" was that of the boilermakers and, until June 9, 1953, when he applied for a transfer, his "class" was that of a helper. Perhaps petitioner was not aware of Rule 26—the single seniority limitation—of the effective agreement. But the effect of that limitation on seniority is in nowise altered because petitioner had no notice of it or did not "know anything further about it." *Lewellyn v. Fleming*, 154 F. 2d 211 (C. C. A. 10, 1946); cert. den. 329 U. S. 715; *Earle Restaurant v. O'Meara*, 160 F. 2d 275, 276, (U. S. C. A. D. C., 1947).

The effective agreement, including Rule 26, was entered into with the carrier for and on behalf of petitioner and the others of his craft by his agent the Brotherhood of Boilermakers. His individual contract of employment incorporated the terms of the effective agreement, including Rule 26. *J. I. Case Co. v. Labor Board*, 321 U. S. 332, 335; *Steele v. L. & N. R. Co.*, 323 U. S. 192, 200-201. Rule 26 is both the source and the limitation of such seniority rights in the boilermakers' craft as petitioner has had since the 1946 agreement became effective with respect to that craft. *Williams v. Atchison, T. & S. F. Ry. Co.*, 204 S. W. 2d 693, 695—696 (Mo. 1947); cert. den. 333 U. S. 854; *Elder v. New York Cent. R. Co.*, 152 F. 2d 361, 364 (C. C. A. 6, 1945).

Because of Rule 26, a part of petitioner's employment contract, carrier was compelled to honor petitioner's seniority as a helper. As long as petitioner desired to retain that seniority status no one could deprive him of it—except if by some act of his there was good cause for discharging him. Petitioner did not indicate until June 1953 that he wanted to acquire the seniority status of a boilermaker. Therefore, until that time petitioner securely held his helper's seniority. Since he was limited to a single seniority status, he could not at the same time have seniority as a helper and a boilermaker (mechanic). As has been pointed out in carrier's foregoing statement of facts, the general chairman of the Brotherhood of Boilermakers, as well as the president and secretary of Local 655, acknowledged that under the circumstances carrier could not have placed petitioner on the boilermakers' roster until June 9, 1953.

In view of the foregoing, carrier respectfully submits that the claim should be dismissed for want of jurisdiction, but that if it is not so 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 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.

The parties to said dispute waived right of appearance at hearing thereon.

The record discloses that this dispute was not handled on the property in accordance with the grievance procedures outlined in Rule 30 of the controlling agreement and Section 3, First (i), of the Railway Labor Act. Therefore, this Division is without jurisdiction. (See Second Division Award 1852 and others cited therein.)

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of March, 1955.