

**Award No. 1967
Docket No. 1798
2-AT&SF-CM-'55**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

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

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY (Eastern Lines)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Military Veteran Carman Helper R. J. Blindt was unjustly deprived of his contractual rights when he returned from the military service to the service of the Carrier and was denied the right to displace a Carman Helper junior in seniority as such, who was working as an ungraded helper performing Carman's work at Carman's rate of pay.

2. That accordingly the Carrier be ordered to:

- a) Make this employe whole by additionally compensating him for the difference between Carman Helper and the applicable Carman rate for each hour worked by the Claimant commencing 8 A. M., November 24, 1952, until correction is made.
- b) Permit this employe to exercise his Carman Helper seniority over any Carman Helper junior in seniority to his seniority, who was upgraded to a Carman while the Claimant was in the military service.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper R. J. Blindt, hereinafter referred to as the claimant was employed by the carrier in its Fort Madison, Iowa, car department, located at Shopton, as such on May 24, 1948 and established carman helper seniority on that date, which has been intact since.

On November 8, 1948, the claimant enlisted in the U. S. Navy. He was properly protected by leave of absence, and the U. S. Selective Service Act as amended, insofar as his re-employment rights are concerned. The claimant was discharged from the U. S. Navy on November 7, 1952 and returned to the carrier service November 24, 1952, as a carman helper.

On November 24, 1952, the claimant made request on his supervisor in accordance with the controlling agreement, to displace the upgraded

"And with substantial uniformity the reported opinions disclose that attitude. The courts have been alert to assure to veterans the rights conferred on them by the statute but unwilling to erect novel and unprovided avenues for their preferment."

In the face of the authorities referred to in this Part One of the position of the carrier, the carrier has no alternative but to maintain that the claimant is not entitled to make the displacement which the organization claims he should have been permitted to make upon his return from military service. There is neither foundation nor support for the claim, which should be denied.

Part No. 2.—a) For the sake of emphasis the carrier directs special attention to that part of the carrier's statement of facts in this ex parte submission which appears in the second full paragraph on page 4. The general chairman in carrying this claim on appeal to the assistant to vice president of the carrier, stated in his letter of December 15, 1953 that:

"However, on February 13, 1953, Mr. Blindt was given a carman helper apprenticeship. Therefore, February 19, 1953 would be the cut-off date for the difference between carman helper and carmen's rate of pay as claimed. The time claim for November 24, 1952 to February 13, 1953 is still in force."

which the carrier considers a definite dismissal of any claim or action to be taken subsequent to February 13, 1953. While there is no merit and no point to any part of the claim, it must be obvious from the general chairman's own statement that subsequent to February 13, 1953, no claim could possibly be in order.

Part No. 2.—b) Mr. Blindt is, as this is written, on leave of absence from his position as freight carman helper apprentice with this carrier, attending the University of Iowa, under Public Law No. 550. The carrier is of the opinion that it was never the intention of the organization representatives working on the property to ask that Mr. Blindt be permitted to displace any carman helper his junior who had been upgraded to carman without seniority while the claimant was in military service. The carrier does not believe, but of course does not have any information from the claimant on that score, that the claimant would wish to have his status as a freight carman helper apprentice changed by an edict of the Board, or from any other source.

The carrier respectfully suggests that the organization sufficiently inform itself in the future regarding the claims that it brings before the Board, that it will not be contending for something which organization representatives on the property have not asked for, do not want and which the claimant does not want and which have no legitimate place in the claim picture.

In conclusion the carrier would again reiterate that the claim in the instant dispute is groundless, devoid of any support in the law, the agreement or any other medium of authority and cannot consistently be sustained.

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.

The same parties and identical issue being involved here as in Docket 1797, subject of Award 1966 decided this date, we adopt the Opinion therein

by reference, for sake of brevity, except as to the following. On February 13, 1953 claimant was given a carman helpers apprenticeship. Therefore, February 13, 1953, would be the cut-off date for the difference between carman helper and carmen's rate of pay.

AWARD

Claim sustained and for the period indicated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of June, 1955.