Award No. 2006
Docket No. 1828
2-N&W-BK-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee David R. Douglass when the award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—Blacksmiths

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That under the current agreement Blacksmith Walter Stephenson was improperly furloughed during the period October 26 through October 31, 1952.

2. That accordingly the Carrier be ordered to compensate the aforesaid Blacksmith for all time lost during the aforementioned period.

EMPLOYES' STATEMENT OF FACTS: Blacksmith Walter Stephenson (hereinafter referred to as the claimant) had seniority as a blacksmith of November 16, 1939 and subdivision seniority as a blacksmith welder of November 2, 1943, at Portsmouth, Ohio.

Blacksmith Helper George R. Bennett was upgraded to a tentative mechanic on September 8, 1952.

The force of blacksmith welders was reduced during the period of claim and the claimant was furloughed as a blacksmith welder.

On Friday, October 24, 1952, the claimant advised General Foreman Pierce that he was being furloughed, while Upgraded Helper Bennett was retained as a blacksmith. Mr. Pierce advised that he would look into the matter. This statement is affirmed by statement of Pipefitter Earl Densmore submitted herewith and identified as Exhibit A.

No action was taken by General Foreman Pierce and the claimant was furloughed, and during the period involved, Blacksmith Helper Bennett was upgraded to a blacksmith.

The dispute was handled with carrier officials designated to handle such affairs, who all declined to adjust the matter.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

that I didn't want it and asked him why he didn't take it and he replied he didn't want it either.

(S) Harold W. Smith
(Harold W. Smith)
Route 6, Box 213,
Portsmouth, Ohio.

Subscribed and sworn to before me this fifth (5th) day of January, 1955.

(S) C. E. Gates
Notary Public
C. E. Gates

My Commission expires March 5, 1957.

Portsmouth, Ohio
January 5, 1955."

If claimant had intended to displace G. R. Bennett, filling a vacation vacancy in the car department, he would not have approached William Williams and Harold W. Smith as is brought out in the above affidavits as there was only one position that any of them could have pulled. It will be noted that claimant again contacted both of these men when they signed up for unemployment compensation asking them if they desired to work during the cut off. It will be further noted that claimant told Harold W. Smith that he did not want to work during the cut off either.

The claimant, in his position as local chairman of the blacksmiths, certainly knew the proper way to handle a grievance, and should have requested the blacksmith work in the car department during the reduction in force before he left the shop on October 24, 1952 if he really wanted to work. However, it is the carrier's position that he gave all the handling to the matter he could afford to as it was not his intention to work as blacksmith during the one week he was furloughed as welder when he contacted junior employes to him asking them if they wanted to work. They certainly could not have worked if the claimant desired to do so.

The fact remains that no reduction in force bulletin was posted furloughing the claimant as blacksmith and he could have reported for work on October 27, 1952 if he desired to do so; instead, he signed up for unemployment compensation.

The carrier requests that the Board deny the employes' request.

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 claimant was furloughed as a welder due to force reduction. He also held seniority as a blacksmith and such was sufficient to have permitted him to bump a junior blacksmith who was working subsequent to the time of the reduction of welders.

Claimant's status as a welder had come about by virtue of the provisions of Rule 33 of the agreement.

This case is hinged upon a factual question, the question being—did, or did not, the claimant properly make known his desire to displace?

The facts, as presented to this Division of the National Railroad Adjustment Board, are in direct conflict. There is no denying the claimant's right to displace if such desire had been made known in conformance with the accepted practice on this property.

The burden of proof is on the claimant to establish his right to relief by action of this Board. From the record before us we are unable to determine that the facts warrant a sustaining award.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of November, 1955.