Award No. 2032
Docket No. 1896
2-AT&SF-EW-'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. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. (Electrical Workers)

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, COAST LINES

DISPUTE: CLAIM OF EMPLOYES: (1) That under the current agreement Electrical Worker Apprentice, J. O. Voelker, upgraded to an electrician, was improperly demoted to the status of apprentice on June 18, 1954, while an electrician helper was working in the capacity of electrician.

(2) That accordingly the carrier be ordered to:

a) Upgrade Apprentice Voelker to the position of electrician without seniority;

b) Additionally compensate Apprentice Voelker in the amount of 8 hours' pay at the electrician's rate for each Saturday and Sunday retroactive to June 18, 1954, that were his regular assigned work days when working as an electrician, which days he was not permitted to work after being improperly demoted;

c) Additionally compensate Apprentice Voelker the difference in the amount of pay received for working each Wednesday and Thursday retroactive to June 18, 1954, as an apprentice and that which he would have received at the electrician's time and one-half rate, which days were rest days in the electrician's assignment.

d) Additionally compensate Apprentice Voelker the difference in the amount of pay received for each Monday, Tuesday and Friday retroactive to June 18, 1954, as an apprentice, and that which he would have received at the electrician's rate of pay.

EMPLOYES' STATEMENT OF FACTS: Mechanical department electrical Worker Apprentice J. O. Voelker, hereinafter referred to as the claimant, is an hourly rated apprentice, regularly employed by the carrier in the mechanical department, in the Los Angeles, 8th Street Coach Yard, as an electrical worker apprentice.

In Award 1645 of the Third Division, it was stated that:

> ". . . having stood by for nine years, with full knowledge of the facts, without protesting the arrangement the organization should not now be allowed to assert a claim for violation of the agreement."

Perhaps the employes may contend that the practice was "protested" by reason of their having raised the question in 1951 and again in 1953. Surely such a position would be wholly unwarranted by the facts. The carrier gave the employes its interpretation of the pertinent rules involved and agreed to discuss the matter to a conclusion with the system committee, but judging from the fact it was not pursued further until 1953, and then only in the interest of an individual case, without reference to past conference on the subject, it must be concluded that the committee accepted, or at least acquiesced in the carrier's interpretation.

Obviously, if the carrier had allowed Claimant Voelker to displace Electrician Steinhoff, with the latter being reduced to status of a helper, Steinhoff would have submitted a claim which the carrier would have had to pay on the basis of the two previous cases referred to above.

The carrier submits that even if Claimant Voelker had been mishandled, which, of course, we do not admit, when he was denied the right to displace Steinhoff, the claim as presented is entirely out of line since the most he could be entitled to recover is the difference between what he earned and what Steinhoff earned. Mr. Voelker is claiming 8 hours pro rata on Saturday and Sunday, on which days he did not work after June 17, 1954, 12 hours at electrician's rate Wednesday and Thursday, on which days he worked as electrician apprentice, and the difference between electrician's rate and electrician apprentice's rate Monday, Tuesday and Friday. Thus, Claimant Voelker is seeking the equivalent of 8 days' pay at electrician's rate each week, whereas he would have received only 5 days' pay had he been allowed to displace Steinhoff. For reasons which will appear later herein, the preceding comments apply only to the period June 18 to 30, inclusive, 1954.

Another feature involved is that from June 17, 1954 until March 30, 1955, on which latter date Claimant Voelker completed his apprenticeship and established seniority as journeyman electrician, he worked as electrician without seniority the majority of the time. He resumed service as electrician July 1, 1954 and continued in that capacity until November 17, 1954, returning to apprentice status on the latter date and continuing until March 8, 1955, when he was again upgraded without seniority. Thus, from June 17, 1954 to March 30, 1955, 286 calendar days, Voelker worked as electrician without seniority for periods totaling 162 calendar days, compared with 124 calendar days as apprentice.

Thus, the carrier submits that the maximum penalty could only be the difference between electrician's rate and apprentice's rate on the days Voelker actually performed service during the two periods comprising the 124 calendar days mentioned above.

In conclusion, the carrier submits that Mr. Voelker was handled in accordance with the agreed to interpretation of the applicable rules, as demonstrated by the past settlements quoted herein. Particular attention is called to the last paragraph of Mr. Kirkpatrick's letter of November 13, 1951 to General Chairman Jamison of the carmen wherein it was stated that the question was raised in conference with the system committee, of which the electrical craft is a part, merely for the purpose of getting a uniform understanding of the intent of the agreement.

The carrier further submits that the agreement rules should be applied in the same manner for all crafts signatory thereto and that a sustaining award in the instant case would defeat such uniform handling.

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 question for our consideration is whether or not the carrier violated the agreement when it returned upgraded Apprentice Voelker from electrician to the status of apprentice while an upgraded electrician helper was working as an electrician.

Section (d) of Appendix "A" to General Agreement effective August 1, 1945, provides the proper order or sequence for filling vacancies or augmenting the force of first class mechanics. Section (d) provides that regular apprentices in the last year of their apprenticeship shall be upgraded ahead of helpers with two or more years' seniority as such.

The carrier, in downgrading Apprentice Voelker, has relied on certain wording of Section (i) of Appendix "A" wherein it is said in part that "These employes will be accorded preference as among themselves in the order in which they were assigned to position as Class "B" Mechanics or first-class mechanics for the purpose of any adjustment in force while temporarily working in those capacities." It is our opinion that the above quoted provision applies to upgraded helpers only and does not extend to upgraded apprentices. Section (i), read in its entirety, is the basis for our conclusion.

Section (k) of the Appendix is applicable in the instant case. It became necessary to adjust the force by returning an upgraded employe to his original status when Electrician Strasser returned from a leave of absence. In line with Section (k) a helper should have been returned to his original status before returning an apprentice.

The claim as originally presented and handled on the property is considerably different from the claim before this Board.

Considering the facts of record, we are of the opinion that Part I of the claim is valid and is sustained.

Part 2(a) of the claim should be sustained if an employe is now working in an upgraded position who should have been downgraded prior to claimant in accordance with Section (k) of the Appendix "A." The proper amount which should be paid the claimant is the difference between the amount he earned as an apprentice and the earnings of the employe who was improperly retained in the upgraded position.

Parts 2(b), 2(c) and 2(d) of the claim are not properly before us.

AWARD

Claim disposed of in accordance with the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of December, 1955.