

Award No. 2211

Docket No. 1998

2-T&P-CM-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Edward F. Carter when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Carrier improperly called Junior furloughed Carman Helper H. A. Brennon back in service and upgraded him to Carman around Senior furloughed Carman Helper V. T. Simmons, and worked him as a Carman at Addis, Louisiana from October 18th through October 26th, 1954.

2. That accordingly the Carrier be ordered to compensate Senior furloughed Carman Helper V. T. Simmons for each and every hour worked by Junior furloughed Carman Helper H. A. Brennon from October 18th through October 26th, 1954, at the applicable rate of pay.

EMPLOYEES' STATEMENT OF FACTS: At Longview, Texas, the carrier maintains a running repair and inspection force of approximately 21 carmen, 3 carmen apprentices and 15 or 18 carmen helpers. On or about October 18, 1954, Junior furloughed carman helper was called back to service and notified to report for work as an upgraded carman at Addis, Louisiana, October 19, 1954. He worked this assignment through October 26, 1954, at which time he was furloughed. Brennon's seniority date as a carman helper at Longview, Texas, is 3-8-51. Carman Helper V. T. Simmons with a seniority date of 1-16-45, was furloughed at Longview, Texas, when Carman Brennon was called and transferred to Addis as an upgraded carman. Simmons was available for work and would have gone to Addis to work if he had been contacted, but the carrier failed to contact him in respect to the job at Addis.

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 no seniority system was in effect, governing which helper at distant points should be promoted and transferred to work as carman at Addis, in 1954.

And thus we come back to the point where we started. Now we see why the Brotherhood did not notify the carrier's highest officer of its rejection of his decision of January 28, 1955. Now it is clear that it was because the decision was **not in fact rejected**. That decision was in fact accepted, and an agreement was made as to how such matters should be handled, and the whole controversy was adjusted and settled on the property, on February 18, 1955.

For the reasons stated, the carrier respectfully requests the Board to dismiss or deny this claim.

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.

Claimant is a furloughed carman helper at Longview, Texas. H. A. Brennon is also a furloughed carman helper at that point having seniority junior to that of the claimant. Carrier called Brennon back into service, upgraded him to carman and used him at Addis, Louisiana, from October 18 to 26, 1954. It is the contention of claimant that as the senior carman helper he should have been used.

The carrier contends that the organization has lost its right to appeal under the provisions of Article 5 of the Agreement of August 21, 1954. The claim in this case was initiated on October 26, 1954. It was denied by carrier's highest officer designated to handle such disputes on January 28, 1955. The notice of intent to appeal to this Board was given on September 25, 1955. It is the contention of the carrier that the failure of the organization to notify the carrier within sixty (60) days that the decision of such highest officer was not acceptable closes out the claim. We point out that this claim was instigated prior to the effective date of the agreement of August 21, 1954, and was declined by carrier's highest officer after the effective date of that agreement. The issue is determined by that part of Article V(c) which provides:

"The requirements outlined in paragraphs (a) and (b), pertaining to appeal by the employe and decision by the Carrier, shall govern in appeals taken to each succeeding officer, except in cases of appeal from the decision of the highest officer designated by the Carrier to handle such disputes."

The requirement of a sixty (60) day notice of rejection does not apply to an appeal from the decision of carrier's highest officer. It is within the stated exception. The claim involved in such a decision is barred only if an appeal to this Board is not instituted within nine (9) months from the date of such decision.

It is not disputed that claimant is senior to Brennon. Under the provisions of Rule 18(c), carrier is required to call furloughed employes in the order of their seniority. Carrier states that claimant had previously refused employment outside of Longview. The record shows that in 1951 claimant was offered employment as an upgraded carman. He was working at Longview as a carman helper and stated that he preferred to work at home as a

carman helper than to work at Marshall as a carman. Claimant was furloughed when carrier called Brennon. The situation was altogether different than when he declined the work at Marshall. The fact that he declined the work at Marshall does not relieve carrier of the necessity to recall him to service in seniority order when the force is increased.

The contention that carrier was under no obligation to call claimant because the work at Addis was carman's work and claimant had seniority only as a carman helper has no merit. It was work which he could perform under the agreement and his seniority entitled him to it as against a junior carman helper. This does not mean that a system seniority has been established by an award of this Board. The effect of this holding is that if carrier desires to recall a furloughed carman helper at Longview, it must recall the senior carman helper at that point.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of August, 1956.