

Award No. 2258
Docket No. 2285
2-UP-SM-'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. 105, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Sheet Metal Workers)**

UNION PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current applicable agreement Sheet Metal Worker Helpers Floyd E. Phillips, A. C. Wyngaarden, George S. Miller, Oliver C. High, Ernest M. Goodman, James L. Brown, Kenneth C. Goodman, R. K. Bartholomew Jr., Watson E. Baker, Lois A. Hudson, Verle L. Fowles, Maurice A. Miller, David D. Benson and Coy L. Munson were unjustly dealt with when Local Management at Salt Lake City refrained from recalling them in their seniority order, while employes from another seniority District were assigned to the positions that rightfully belonged to them, together with the fact that men junior to them on their respective seniority roster were recalled and promoted to journeymen.

2. That accordingly the Carrier be ordered to:

- a) Compensate These employes for all wage loss.
- b) Discontinue these improper assignments.
- c) Refrain from assigning employes off their seniority district for the purpose of depriving furloughed men of an opportunity to work.

EMPLOYEES' STATEMENT OF FACTS: The above named claimants employed by the carrier have a seniority date as follows:

"Sheet Metal Worker Helper Floyd E. Phillips	1- 8-52
Sheet Metal Worker Helper A. C. Wyngaarden	1-14-52
Sheet Metal Worker Helper George S. Miller	3- 3-52
Sheet Metal Worker Helper Oliver C. High	7- 9-52
Sheet Metal Worker Helper Ernest M. Goodman	9-19-52
Sheet Metal Worker Helper James L. Brown	9-25-52
Sheet Metal Worker Helper Kenneth C. Goodman	11-19-52
Sheet Metal Worker Helper R. K. Bartholomew Jr.	1-27-53
Sheet Metal Worker Helper Watson E. Baker	2- 2-53

In a letter of October 12, 1955, Chief Engineer Perkins replied:

"I have reviewed the letter signed by Mr. Prater and Mr. Ziesel dated March 9, 1939 to which you refer, however, I do not concur that it covers the instant case as it deals with employes being recalled to service in the class they hold seniority.

Position stated in my letter of November 19, 1954, which has been reiterated to you in conferences December 14, 1954 and August 11, 1955 and confirmed to you in my letters of April 20 and August 11, is again reaffirmed."

POSITION OF CARRIER: There is no basis for the instant claim which, according to the organization, is premised upon Rule 27 of the agreement, and apparently also the letter agreement of March 9, 1939.

Rule 27, which refers to reduction and restoration of forces, is not applicable to this claim. The claimants herein are all helpers and there was no restoration of helper forces during the period in question. The employes constituting Gang 1252 were all either mechanics or set-up mechanics prior to the time they were assigned to work on the district between Sandy to Silver Bow. There were no employes restored to the force in the capacity of helpers during this period. The only employes which were restored to the force or used from another seniority district were in the status of mechanic or set-up mechanic. None of the claimants were qualified either as mechanics or set-up mechanics.

In the same way the letter agreement of March 9, 1939, is inapplicable to this claim in that it deals entirely with the procedure for recalling employes to service in the class in which they hold seniority. As previously pointed out, the claimants all held only helper seniority, and there were no vacancies or restoration of forces in that class. The only vacancies were in the mechanic's class, and none of the claimants either held seniority in that class, or had been found qualified to be advanced to the status of a "set-up mechanic". Under such circumstances the letter agreement of March 9, 1939, had absolutely no application.

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.

Claimants are fourteen (14) sheet metal worker helpers who were employed at Salt Lake City, Utah. They were furloughed in force reduction. It is the contention of the organization that carrier recalled sheet metal worker helpers junior to the claimants in violation of the agreement. They claim compensation for time lost resulting from the violation.

A detailed statement of the facts in the case is necessary to a correct determination of the dispute. In 1951, carrier commenced the construction of a new Diesel shop at Salt Lake City. For a year or more, the carrier found it necessary to employ a large number of men as sheet metal worker helpers who had had no previous experience in the trade. Claimants were among this group. As the work progressed and the construction of the underground lines was completed, a large number of these inexperienced sheet metal worker helpers were not needed and many, including claimants, were furloughed in force reduction. As the work progressed, however, there was need for more qualified sheet metal workers (mechanics) to install the heat, sanitary and water facilities. All qualified sheet metal workers (mechanics)

on the district roster were called. Carrier then called all sheet metal worker helpers who had shown ability to perform mechanic's duties, promoted them to the status of "set-up mechanics," and recalled them to service in that capacity with the consent and approval of the local chairman of the organization. The carrier and the organization's local chairman mutually determined that claimants were not qualified for the "set-up mechanic" status and they were neither promoted nor returned to service in a promoted capacity. There were sheet metal worker helpers who held seniority as such helpers junior to claimants that were found to be qualified. They were promoted and recalled to service as "set-up mechanics." An insufficiency of mechanics still remained and carrier used a complete gang from another seniority district which contained some "set-up mechanics," but no helpers, none of whom had seniority in the Salt Lake City district. It is upon this statement of facts that claimants base their claim.

The carrier asserts that it has been the practice of long standing on this railroad, when there is an insufficiency of sheet metal workers (mechanics), to upgrade helpers who appear to possess sufficient ability to perform mechanic's duties, without such helper attaining any seniority as a mechanic. These temporary promotions have been made without regard to seniority only with the approval of the local chairman. Such promotions have been recognized in a special agreement bearing the date of March 23, 1944, and executed by the general chairman. It is clear from this agreement that qualified helpers may be used when the work exceeds the capacity of the sheet metal workers (mechanics) without the attainment of seniority rights in so doing. These claimants had been employed as helpers. Their work had been observed and the carrier and local chairman had mutually determined that they were not qualified. The organization contends that the local chairman was without authority to do what he did. We quite agree that the local chairman may not make or amend agreements, or render binding interpretations. He did not do so in the present case. He did undertake to assist the carrier in selecting the qualified helpers for the "set-up mechanic" status. Even if he could not properly do that, the evidence does show that carrier was seeking to avoid discrimination in the selection of qualified "set-up mechanics." The rules nowhere provide that the senior helper must be used as a "set-up mechanic." In fact, it appears to have been a practice to meet a situation not mentioned in the schedule agreement but recognized by the special agreement of March 23, 1944.

The carrier recalled no helpers. Claimants held seniority only as helpers. Consequently no helpers junior to claimants were recalled because none were recalled at all. The real question is whether or not carrier (and the local chairman as well under the practice) is required to promote helpers to the status of "set-up mechanics" in the order of their seniority. The agreement does not so provide. The schedule agreement provides that when new jobs are created as here, the oldest employes in point of service shall, if sufficient ability is shown by a fair trial, be given preference in filling such new jobs. Rule 18, current agreement. The carrier is not required to promote helpers who have not qualified under the rules who have no ability to perform the work. As we have stated, these claimants worked as helpers for a year or so, and their abilities were undoubtedly observed, not only by the carrier but by the local chairman as well. Whether or not the local chairman was exceeding his authority here is not a primary issue as we see it. His agreement with the carrier indicates that the carrier was acting fairly and without any intention to discriminate.

The claimants have not attempted to establish their ability to do the work of a "set-up mechanic." This is proof which is essential to a claim that they have been discriminated against. The procedure followed appears to have been the practice on this railroad and recognized as such by the organization in the special agreement herein referred to. We fail to find any provision in the applicable agreements dealing with claimants' rights as furloughed sheet metal workers' helpers which has been violated. The carrier appears to have followed an established practice. It sought and received the coopera-

tion of the local chairman. Under such circumstances, the failure of claimants to establish sufficient ability and an arbitrary refusal of the carrier to promote them, requires a denial of the claim because of a want of sufficient proof.

AWARD

Claim denied per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 28th day of September, 1956.