

Award No. 2288
Docket No. 2034
2-GN-FO '56

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Firemen and Oilers)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement the Great Northern Railway Company has unjustly denied Engine Watchman Charles Neidhardt employment as such at Conrad, Montana since about January 4th, 1955.

2. That accordingly the Great Northern Railway Company be ordered to restore this employe to service thereat and compensate him for all time lost retroactive to the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: At Shelby, Montana, the Great Northern Railway Company, hereinafter called the carrier, had employed three men as engine watchmen. However, on January 4, 1955 the carrier elected to discontinue Shelby as a point for the employment of engine watchmen and thereupon furloughed the three engine watchmen employed there. Consequently, the carrier, about January 4, 1955, established two new engine watchmen points, one at Cut Bank, Montana and the other at Conrad, Montana, which latter location is about 31 miles from Shelby.

These three engine watchmen furloughed at Shelby, upon being advised that they were to be furloughed, made written application for other work with the carrier. The senior of the three, Ralph Baldani, confined his request for other work only at Shelby but the second and third senior men, Floyd E. Mesler and Charles Neidhardt, requested work at their home point, Shelby, or at other points where men were needed.

As the result of making such written applications, Engine Watchman Floyd Mesler was given work as an engine watchman at Cut Bank, Montana but Engine Watchman Charles Neidhardt, hereinafter referred to as the claimant, was denied such work at Conrad, Montana and a copy of his written request for such employment, dated December 27, 1954, is submitted herewith and identified as Exhibit A.

Further, it is reasonable to assume that Mr. Neidhardt was aware of the possibility of a job being established at Conrad, Montana, which is 35 miles from Shelby where he resides and from which point he was furloughed. Mr. Neidhardt did not file an application for work with the master mechanic at Great Falls on the Butte Division.

5. A prime responsibility of a master mechanic is to assign men to jobs in order that the railroad continues to operate. Mr. Wright, the master mechanic of the Butte Division, assigned Mr. Wilde and Mr. Newcome to the engine watchman's job at Conrad on his division as they had their applications for work elsewhere on file in his office. Mr. Neidhardt had no such application on file in his office. It is reasonable to assume that had Mr. Wright had possession of an application for work elsewhere from Mr. Neidhardt, he, no doubt, would have called Mr. Neidhardt for the job from Shelby, Montana, which is 35 miles from Conrad, the point at which a job was established, instead of assigning two men from Helena, Montana.

6. Further, it being the responsibility of the master mechanic of each division to assign men to jobs only on his division and it being the responsibility of the master mechanic to use men who have properly notified him in writing of their desire for work elsewhere (in complying with Rule 9(a) and (b)), Mr. Wright used the only possible means by which the jobs could be filled by him at Conrad, namely, assigning the only two men who had filed with him an application for this work. Mr. Wright could not be aware of Mr. Neidhardt's application for work elsewhere because such application had been filed in offices located on another division and in offices not under his jurisdiction.

In summary, it is the carrier's contention that no violation of the agreement occurred and that the master mechanic at Great Falls, Montana, acted in full compliance with Rule 9(a) and (b) when he assigned the two furloughed available Butte Division engine watchmen, Mr. Wilde and Mr. Newcome, to the jobs as engine watchmen at Conrad, Montana, which is located on his division, on January 3, 1955.

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.

This claim is in behalf of Engine Watchman Charles Neidhardt. It is claimed carrier has unjustly denied him employment as an engine watchman at Conrad, Montana, since January 4, 1955. Because of that fact it asks that claimant be restored to service and compensated for all time lost since January 4, 1955.

Prior to January 4, 1955 carrier had employed three (3) engine watchmen, including claimant, at Shelby, Montana. As of that date carrier discontinued these three (3) positions and furloughed the men occupying them. On December 27, 1954 claimant notified W. F. Hallinan that he wished to be called for any extra work of engine watchman at Shelby "and in addition per Rule 9 I would like to be considered for service at other points where men are needed for watching * * *."

As of January 4, 1955 carrier established a position of engine watchman at Conrad, Montana, which is about thirty-five (35) miles from Shelby. Two furloughed engine watchmen from Helena, Montana, a distance of about one hundred and sixty-four (164) miles from Conrad, were assigned to fill it. The organization contends carrier was required to assign claimant thereto in preference to the furloughed men from Helena because Shelby is closer to Conrad than Helena. Since the question presented is dependent upon Rule 9(a) and (b) of the parties' agreement we shall set them out in full.

"Rule 9(a) Available furloughed employes who have made written application for service elsewhere will be used at other points when men are needed, in preference to hiring new men. Such transfers will be made without expense to the Company, other than the furnishing of necessary transportation. In the application of this rule, selection of available furloughed employes shall be made from those located nearest to the point where additional employes are needed, subject to the provisions of paragraph (b) of this rule. Employes furloughed at one point and accepting service with the Company under this schedule at another point will retain their home point seniority, subject to the provisions of Rule 7.

(b) An employe laid off in reduction of force desiring to secure employment under this rule, shall notify his foreman in writing at the time laid off." Admittedly claimant complied with the requirements of 9(b).

Carrier seems to rely on the fact that both Helena and Conrad are in its Butte Division whereas Shelby is in its Kalispell Division. However Rule 9(a) contains no such limitation on employes coming within the provisions thereof. It further suggests that Master Mechanic W. A. Wright makes all assignments in the Butte Division and that claimant filed no request with him; whereas, he did file such request with Master Mechanic W. F. Hallinan who makes all assignments in the Kalispell Division. Again we call attention to the fact that Rule 9(b) only requires that the employe "shall notify his foreman in writing at the time laid off."

It is the carrier's responsibility and duty to properly put into effect on its property all the provisions of any agreement it has made with its employes. Here the agreement specifically provided "In the application of this rule, selection of available furloughed employes shall be made from those located nearest to the point where additional employes are needed, * * *." Carrier should have investigated its roster of furloughed engine watchmen at all points where such men might be available to see that it complied therewith.

Since Rule 9(a) has no requirement as to seniority, which is apparently on a point basis, we think carrier improperly used furloughed engine watchmen from Helena and should have first used claimant, who was nearer to Conrad. In view of that fact we find the claim here made must be sustained.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of October, 1956.