

**Award No. 3594**

**Docket No. 3363**

**2-A&WP-CM-'60**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Wilmer Watrous when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 126, RAILWAY EMPLOYES'  
DEPARTMENT, A.F. of L.—C.I.O. (Carmen)**

**ATLANTA & WEST POINT RAILROAD—  
THE WESTERN RAILWAY OF ALABAMA**

**DISPUTE: CLAIM OF EMPLOYES:**

- 1—That the Carrier violated the terms of the agreement in assigning a junior furloughed Montgomery, Alabama carman to a carman's position at Selma, Alabama and accordingly
- 2—The Carrier be ordered to assign the senior carman applicant to the Selma, Alabama carman position and additionally compensate him for all time lost in conformity with the agreement.

**EMPLOYEES STATEMENT OF FACTS:** On Tuesday, December 10, 1957 Carman H. H. Staggers was furloughed from the carrier's Montgomery, Alabama Shops and on Friday, December 27, 1957 Carman H. O. Taylor was also furloughed from the carrier's Montgomery Shops.

On January 27, 1958, furloughed Carman H. O. Taylor made application to the carrier's master mechanic at Montgomery for a carman's position at Selma, Alabama under the provisions of Rule 24 of the Agreement.

The seniority datings of Carmen Taylor and Staggers is October 5, 1955 and August 6, 1957, respectively. Notwithstanding the application, furloughed Carman Staggers was transferred and assigned to fill a carman's position at Selma, Alabama on Monday, February 3, 1958.

This dispute has been handled repeatedly with carrier officials, from bottom to top, without obtaining the desired result.

The agreement effective August 15, 1944, as subsequently amended, is controlling.

**POSITION OF EMPLOYEES:** It is submitted that in accordance with the unambiguous Rule 24, captioned: "Transferred Furloughed Employees" reading—

On January 31, 1958, Bulletin No. 4120 was issued by master mechanic, addressed to all car inspectors, Selma, Alabama.

“There is a vacancy for One Car Inspector in Selma Yard working 7:00 A.M.-3:00 P. M. Mondays through Fridays with off days Saturdays and Sundays (formerly held by J. C. Powell.) (Retired).

Bids for this vacancy will be received in my office until 8:00 A. M. February 6, 1958.”

This bulletin was issued in compliance with Rule 14, “Filling New Jobs,” reading:

“When new jobs are created or vacancies occur in the respective crafts, the oldest employe in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or any vacancies that may be desirable to them. All vacancies or new jobs created will be bulletined. Bulletins must be posted five (5) days before vacancies are filled permanently. Employes desiring to avail themselves of this rule will make application to the official in charge, and will give a copy of the application to the local chairman. (In event no bids are received within the five-day period the youngest man will be placed on the job).”

On or about February 4, 1958, Claimant Taylor called master mechanic on the telephone and had a discussion about placing a bid under Bulletin No. 4120. Claim was declined on the property for the reason that no rule violations were shown and the further fact that part of the claim, if there be one, which we do not concede, is barred by failure to file same within the time limit set forth in the time limit on claims rule.

**POSITION OF CARRIER:** Claim was filed on April 20, 1958. Under the time limit on claims rule, if there be a claim, it would start on February 20, 1958, rather than January 6, 1958, date Mr. Staggers started vacation relief.

It will be noted that while Mr. Taylor's letter of January 27, 1958, has been referred to as a bid, and the writer is guilty of referring to it as a bid in correspondence with the general chairman, it is an application to be placed at Selma under a particular rule of the agreement. At that time, there was no vacancy at Selma, as Car Inspector Powell had returned to work. When the job was advertised claimant could not bid on same as he held no seniority at Selma. What he did then was to call the master mechanic and discuss with him the possibility of bidding on the job. Note this was some days after his request that he be placed on the job under Rule No. 24. In the course of that conversation he told the master mechanic to disregard his request, which he apparently considered a bid. Submitted herewith is copy of letter from claimant to carrier's master mechanic, dated January 9, 1959, confirming withdrawal of whatever might be termed his letter of January 27, 1958.

Carrier knows of no reason why claimant was not free to withdraw this request. It was not a bid for a vacancy under Rule 14.

Carrier violated no rule of the agreement. This claim is utterly without merit and carrier requests that it be denied.

**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. 1

This Division of the Adjustment Board has jurisdiction over the dispute involved herein. 2

Parties to said dispute were given due notice of hearing thereon. 3

The claimant, Taylor, applied for a carman's position at Selma, Alabama, on January 27, 1958, under the provisions of Rule 24 of the controlling agreement. This rule gave preference to furloughed men in order of seniority to jobs at other seniority points.

It is apparent from the submissions in this docket that Taylor was eligible for the position which ultimately developed on February 13, 1958. Staggers, the carman assigned under similar circumstances, was a junior employe. 5

The issue was: "Did Taylor withdraw his application for the assignment in dispute?" 6

In a telephone conversation on or about February 4, 1958, claimant discussed his rights to bid for a position advertised in Selma, Bulletin 4120. The claimant gave the carrier the impression that he was withdrawing his application. Apparently there was some confusion involved. Claimant appeared to believe that he had withdrawn only his request, via the telephone conversation, for the right to bid on the specific position advertised in Bulletin 4120, a position for which he was ineligible due to senior men bidding at the point (Selma). 7

In view of this confusion and the conflicting documents contained in the submissions, the Board can only point out that the carrier appeared to act in good faith and that the claimant appeared to accept the carrier's assignment of Staggers to the job for which Taylor was eligible, since the claimant did not file grievance until April 17, 1958, after the expiration of the sixty day limit for filing a timely grievance. 8

The Board holds that the violation alleged in this claim was not a continuing violation. The fundamental characteristic of a continuing violation is that, as a consequence of an erroneous interpretation or practice adopted by one of the parties, a right guaranteed in a controlling agreement is withheld from the other party, when otherwise it could have been exercised on any of successive days during the period of the violation. 7

In the dispute before the Board a single event occurred on February 13, 1958 which gave rise to the claim. For successive days thereafter no showing was made that the claimant was prevented from exercising his right to transfer under rule 24. Instead the claim was "that the Carrier violated the terms of the agreement in assigning a junior furloughed Montgomery, Alabama, carman to a carman's position at Selma, Alabama." This event, if true as alleged, took place on February 13, 1958.

#### AWARD

The claim is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 9th day of November 1960.