

Award No. 3596

Docket No. 3449

2-CUT-SM-'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.

PARTIES TO DISPUTE:

SYSTEM FEDERATION No. 150, RAILWAY EMPLOYEES'

**THE CINCINNATI UNION TERMINAL COMPANY
DEPARTMENT, A.F. of L.-C.I.O. (Sheet Metal Workers)**

DISPUTE: CLAIM OF EMPLOYEES: That under the current Agreement, the Cincinnati Union Terminal Company illegally retained and accumulated sheet metal worker helper C. C. Daniels' helper's rights while he was employed as a Car Cleaner Foreman.

That accordingly the Carrier be ordered to:

1. Remove C. C. Daniels' name from the present standing on the sheet metal worker helpers' seniority roster now shown as number three (3).
2. Place C. C. Daniels' name on the sheet metal worker helper's seniority roster where it fits in as of the date the Cincinnati Union Terminal Company permitted him to return to the sheet metal workers' craft as a furloughed car cleaner foreman and displace a sheet metal worker helper that was upgraded receiving mechanic's pay on date of March 29, 1958.

EMPLOYEES' STATEMENT OF FACTS: C. C. Daniels was employed by the Cincinnati Union Terminal Company, hereinafter referred to as the carrier, on date of January 1, 1934 as a car cleaner (extra) and his employment with the carrier is as follows:

“January 1, 1934 — employed as an extra car cleaner.
April 1, 1934 — resigned.
June 3, 1936 — employed as an extra car cleaner.
December 6, 1936 — assigned regular to a car cleaner.
August 13, 1939 — assigned to a sheet metal worker helper and gave up car cleaner rights.
October 10, 1940 — L. of A. entered Military Service *Enlisted.
January 26, 1946 — reinstated as sheet metal worker helper.

must be classed as being in the mechanic's ranks. An employe receiving mechanic's wages certainly is not a helper when it comes to classifying him in the proper rank of employes.

Item 6. This case cannot be classified as coming under the leave of absence rule as there is no leave of absence involved and no protective provisions were necessary to protect his seniority.

The employes also request company to change seniority of Mr. Daniels from August 13, 1939 to March 29, 1958 and deny him approximately 19 years seniority.

Under date of April 9, 1956 the present general chairman, Mr. Charles A. Beyer, wrote to Mr. Daniels as follows:

"Referring to your letter dated January 8, 1956 addressed to the undersigned with copies to Mr. E. A. Dryer and Mr. C. L. Daniels.

Please be advised that your name was placed properly on the seniority roster for Sheet Metal Worker Helpers as shown on the one posted for the year 1956 and that roster is correct."

The roster posted for 1956 shows Mr. Daniels in No. 1 position with seniority as August 13, 1939. If the roster for 1956 was correct as Mr. Beyer stated in his letter, why is it wrong in 1958? The present general chairman was fully aware that Mr. Daniels had been promoted to and was working as a car cleaner foreman and had been promoted from his craft. If Mr. Daniels' seniority was incorrect in 1958 why was it not incorrect in 1956? No complaint was received from organization that seniority was incorrect until 1958. If it was incorrect in 1958 it certainly was wrong to carry Mr. Daniels as a helper from 1939. Mr. Beyer by his admission that Mr. Daniels' seniority was correct in 1956 certainly cannot protest 19 years seniority for an employe when Rule 22 of the present agreement states if no appeal is taken within six months, future appeals will not be entertained unless the roster date is changed.

Carrier contends no rules have been violated. Mr. C. C. Daniels was transferred to pipefitter helper August 13, 1939, entered Military Service October 16, 1940, returned to service January 26, 1946 and was upgraded to mechanic January 26, 1946, worked as such for 226 days and was promoted to car cleaner foreman March 24, 1947, worked as foreman until March 15, 1958 when position was abolished. Mr. Daniels was classed as a mechanic and was receiving mechanic's wages. Rule 23 of rules agreement states "None but mechanics or apprentices regularly employed as such shall do mechanic's work." Mr. Daniels was performing mechanic's work, received mechanic's wages and must be classed as a mechanic, therefore he would come within the confines of Rule 14.

When car cleaner foreman position was abolished, Rule 14 would cover the return of Mr. Daniels to the ranks of mechanics. Mr. Daniels was promoted or upgraded to position of mechanic and he had never been demoted from mechanic to the status of a helper, therefore, he was entitled to return to the rank of mechanic.

Carrier respectfully requests the Second Division to deny this claim in its entirety, as the rules agreement sustain the contention of the carrier.

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.

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

The System Federation No. 150 (Sheet Metal Workers) contended that the Cincinnati Union Terminal Company illegally retained and accumulated C. C. Daniels' Sheet Metal Workers Helper's seniority while he was employed as a Car Cleaner Foreman. The organization asserted that Daniels was not a mechanic by the rules of the current agreement, revised September 1, 1949. Rule 14 provided that mechanics would have their seniority rights protected while serving as foremen. Therefore, Rule 14 did not protect Daniels' helper seniority and when Daniels was promoted to the position of foreman in another craft his only recourse, if he wanted to protect his helper seniority, was provided for in Rule 15. These rights were forfeited when he failed to act.

The Carrier contended that Daniels was promoted January 26, 1946, to the status of mechanic according to the terms of the Memorandum of Agreement dated May 19, 1942, and continued in that status under the Memorandum of Agreement dated February 4, 1953. He was promoted to Car Cleaner Foreman March 24, 1947, and to the date of the instant dispute was carried on the sheet metal workers helpers' seniority roster with the seniority date of August 13, 1939. Thus, for a period of eleven years the organization did not challenge or dispute Daniels' helper seniority. The Carrier, therefore, contended that Daniels was properly promoted by agreement with the organization to the status of upgraded helper, that Rule 14 thereafter applied to him, that his promotion to foreman was legal, that his helpers seniority was necessarily retained and accumulated under Rule 14 and, further, that the organization concurred tacitly in this procedure when it failed to protest timely.

The cited agreements and submissions developed the following:

1. Daniels was a mechanic. The Memorandum of Agreement of May 19, 1942, stated as its purpose that "due to the inability of the company to employ mechanics, it is necessary to promote men from lower ranks to supply such needs." It referred to "promoted to positions of mechanics" in paragraphs 1, 2, 3, 4. Paragraph 9 specifically limited the men promoted under this memorandum in the exercise of seniority as provided for in general rule 22 of the current agreement. Paragraph 10 provided specifically for special displacement rights for the mechanics on the mechanics' seniority roster.
2. The memorandum in Paragraph 12 specifically provided that it covered only the situation caused by the shortage of skilled mechanics and that it was without prejudice to the usual rules or established practices.
3. The practices on this carrier's property as a consequence of the Memorandum of Agreement were to apply all of the mechanics' rules and all of the general rules of the current agreement to this special class of mechanics, subject to the specific limitations set out in the memorandum. The organization felt that Rule 14 — Promo-

tion, dealt with a subject matter separate from the temporary shortage of skilled mechanics and was not (according to Paragraph 12) prejudiced by the memorandum.

4. Daniels' promotion to Foreman, while unusual, was legal according to the terms of the current agreement.

The Board must regard the memorandum of agreement of May 19, 1942, as an instrument that authorized the establishment of a special category of mechanics. These mechanics acquired all of the rights of mechanics except those from which they were specifically excluded. Paragraph 12, is regarded as a stipulation that the usual rules and established practices will apply upon termination of the memorandum of agreement. Rule 14 of the regular agreement was thus not specifically excluded from the rights acquired by this special category of mechanics.

The Board holds that Daniels' helper seniority was properly retained and accumulated under Rule 14 when he was promoted to Car Cleaner Foreman from the position of promoted helper (pipefitter mechanic).

The General Committee exercised its rights (reserved in Paragraph 9) to handle the question of Seniority when it negotiated the additional Memorandum of Agreement of February 4, 1953.

Paragraph 11 of this memorandum stated specifically that "helpers who were advanced to Sheet Metal Workers position under the provisions of May 19, 1942 agreement will retain and accumulate seniority as helpers. . . ."

The memorandums do not establish that Daniels was to be deprived of his rights to helpers seniority. The Board holds that when Daniels was furloughed as Car Cleaner Foreman on March 15, 1958, he was properly permitted to exercise his rights as a promoted helper (pipefitter mechanic) on March 29, 1958, when he displaced a promoted helper junior to him on the helpers seniority roster, in accordance with the terms of Rule 14 of the current agreement.

The Board recognizes that probably neither party to the Agreements cited herein anticipated the problem which arose in this docket and therefore made no specific provisions for such a situation. However, the problem had risen when the 1953 Memorandum of Agreement was signed and this memorandum effected no change except to deprive Daniels of creditable service days toward acquiring the status of mechanic on the mechanics' roster. It must be assumed that this was the intent of the parties relative to this dispute.

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