Award No. 3654
Docket No. 3240
2-FEC-SM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 69, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Sheet Metal Workers)

FLORIDA EAST COAST RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement Sheet Metal Worker Apprentice J. B. Wilson was denied the right to exercise his seniority over a junior Apprentice, when during the period of December 24, 1957 through January 3, 1958 the Shop in St. Augustine, Florida, was shut down.

2. That the Carrier be ordered to compensate Apprentice J. B. Wilson for the time lost during the period of December 24, 1957 inclusive through January 3, 1958.

3. That the Carrier be ordered to credit Apprentice J. B. Wilson with the days lost on his apprenticeship, so that he will not be damaged.

EMPLOYES' STATEMENT OF FACTS: The Florida East Coast Railway Company, hereinafter referred to as the carrier, maintains shops in Bowden, St. Augustine, New Smyrna Beach and Miami, Florida. The employes covered by the agreement between the carrier and Sheet Metal Workers of System Federation No. 69 hold common seniority and may exercise seniority in accordance with the applicable rules of the agreement, hereinafter set out.

On December 11, 1957, the carrier issued a bulletin laying off all employes in the shop at St. Augustine, Florida. The employes affected in force reduction in the shop at St. Augustine, Florida, were permitted to exercise seniority and displace junior employes working at other shops under the jurisdiction of the chief mechanical officer, including carrier's employe—sheet metal worker apprentice J. B. Wilson, hereinafter referred to as the claimant.

Rule 129 governing qualifications for sheet metal workers reads, as follows:

"Rule 129. QUALIFICATIONS

"Any man who has served an apprenticeship or has had four (4) years' experience at the various branches of the trade, who is qualified and capable of doing sheet metal work or pipe work as applied to buildings, machinery, locomotives, cars, etc., whether it be tin, sheet iron, or sheet copper, with or without the aid of drawings and capable of bending, fitting and brazing of pipe, in a reasonable length of time, shall constitute a sheet metal worker."

To secure a complete knowledge of the trade, all apprentices must serve not less than a minimum of 8,320 hours as specified in FORM OF INDENTURE of Rule 31, as follows:

"FORM OF INDENTURE

"This will certify that .....
was employed as ..... Apprentice
By the Florida East Coast Railway .....
on ....., 19.... to serve 8 periods of 130, 8 hour days or a minimum of 8320 hours.

.....
(Title of Officer in Charge)

SERVICE PERFORMED DURING APPRENTICESHIP

"This will certify that on ..... 19 ....,
..... completed the course of Apprenticeship specified above and is entitled, if employed by the Florida East Coast Railway, to the rates of pay and conditions of service of .....

.....
(Title of Officer in Charge)"

These rules require that an apprentice must serve 8320 hours to complete the course. By arbitrarily crediting Apprentice Wilson with time not worked, would not only violate the very essence of these rules and deprive Apprentice Wilson of the experience necessary to achieve the skill required, it would also discriminate against other apprentices who suffered time losses during the same period of December 24, 1957 through January 3, 1958, inclusive.

For the reasons stated herein, the entire claim should 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.

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 question presented is whether an apprentice sheet metal worker who is furloughed at one shop, due to the temporary closing of the department in which he is assigned, is entitled to displace a junior apprentice in the same craft at a different shop by the exercise of system seniority as established by Agreement revision effective April 5, 1943 and continued under the current Agreement effective May 1, 1953. Point seniority prevailed for shop craft employes under the jurisdiction of the Chief Mechanical Officer prior to April 5, 1943. The shops in which the two apprentice sheet metal workers were assigned at the time this dispute arose were different seniority points prior to April 5, 1943.

There is no language in Rule 13 (Seniority) which indicates that apprentices have seniority as such. Rule 32(e) refers to granting seniority to apprentices who accept proffered vacancies after having completed their apprenticeship, but this reference is to their acquisition of seniority as mechanics.

It appears that when apprentices have been affected by force reduction at particular shops in the past, they have been furloughed in reverse order of the length of their apprenticeship service. The parties' Memorandum of Understanding dated March 4, 1942 states in paragraph 3 that apprentices who are promoted under the provisions of that document (which provides for accelerated promotion to mechanic positions when regular mechanics are not available) "will continue to accumulate seniority as apprentices."

It will be noted that the above memorandum was negotiated while point seniority was still in effect on this property. The Carrier contends the reference to seniority for apprentices as stated in the memorandum is inconsistent with the subsequent adoption of system seniority in the basic agreement. It asserts the memorandum was allowed to continue unchanged through oversight.

To the extent that the subject memorandum and the current Agreement effective May 1, 1953 are in conflict, the latter must be deemed to be controlling since it was more recently negotiated. There is no language in the Agreement which expressly provides that apprentices do not have seniority among themselves, however. The omission of any reference to seniority for apprentices in the basic contract is not sufficient to revoke the clear language of the memorandum.

The Carrier contends that the concept of seniority for apprentices is inconsistent with the necessity for transferring them from point to point in order that they may progress with their schedule of work and time as set forth in Rule 35 of the Agreement. The rule provides that this schedule will be followed as closely as conditions permit. The question here, however, is whether the work and time of one apprentice may be completely interrupted due to furlough while a junior apprentice in the same craft is retained on duty. A sustaining award is required with respect to Parts 1 and 2 of claim. Part 3 is moot for the reason that claimant was not damaged. He completed

his apprenticeship on June 12, 1958 and is on the Sheet Metal Workers' roster with a seniority date of May 31, 1956 due to his creditable military service.

AWARD

Claim sustained to the extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman,
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January 1961.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 3654

The majority is clearly in error in sustaining the Employes' position in this award. After taking cognizance of the fact that Rule 13, the Seniority Rule of the contract, contained no provision applicable to apprentices and recognizing Article 32 (e) simply provides for the granting of seniority to apprentices who accept vacancies **after** having completed their apprenticeship, to find some basis on which to buttress an obviously erroneous conclusion that apprentices enjoy seniority among themselves, the majority relies upon the Memorandum of Understanding dated March 4, 1942, which had as its announced purpose an objective completely unrelated to the establishment or exercise of seniority by apprentices. The purpose of that Memorandum of Understanding, described therein, is as follows:

> "The Railway industry, like most all other industries, is rapidly reaching the stage of a shortage of skilled workers. Therefore, we find it necessary to make some provisions to supply a sufficient number of capable men to do the work necessary to operate the shops on the Florida East Coast Railway. Accordingly, it is agreed that this will be accomplished in the following manner, effective this date:"

The complete sentence from which the misconception of the majority emanated reads:

> "Apprentices promoted under the provisions of this memorandum, will continue to accumulate seniority as apprentices, and all time worked as mechanics will be counted on their apprenticeship time, and upon completion of required number of days they will be included on the seniority rosters for mechanics in their respective Crafts."

The parties recorded in this provision their intent that time worked by a promoted apprentice in the mechanics craft would also count toward the required time an apprentice must serve during his apprenticeship. Obviously, the parties did not intend to give apprentices seniority or displacement rights as such by this provision.

The principal function of the National Railroad Adjustment Board is the interpreting of existing rules, in this instance Rule 13, of the contract. However, the majority has exceeded that function by effectively revising and amending this rule by placing a totally unwarranted interpretation on the provisions contained therein. This the Second Division, as well as other

Divisions of the Board, has consistently held was beyond its power, or as stated in Award 3040 of the Second Division:

> "Our function is to determine if the existing rules of the Agreement have been violated. We have no power to writes rules for the parties. . . ."

Also see Awards 1130, 1162, 1164, 1181, 1386, 1468, 1481, 3087, and 3305, among others, of the Second Division.

Moreover the majority completely ignored a prior decision of the Second Division directly in point. In Award 2481, the claimant worked as a laborer at the Wilmington Shops January 22, 1952, to January 28, 1952. On the latter date he received an appointment as machinist apprentice, serving such apprenticeship until May 3, 1954, when he was relieved upon competent medical evidence, but retaining his seniority as a laborer. The claim that Carrier unjustly removed him from the apprenticeship and request that Carrier be ordered to reinstate him to the apprenticeship with seniority rights unimpaired with remuneration for time lost was denied on the considered Opinion that:

> "The claimant had not completed his apprenticeship program so had no seniority rights except his rights as a laborer."

The claimant in Award 3654 had not completed his apprenticeship, therefore, he too had no seniority or displacement rights.

P. R. Humphreys

H. K. Hagerman

D. H. Hicks

T. F. Strunck