Award No. 3686
Docket No. 3399
2-ACL-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Carmen)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That, under the controlling Agreement and understanding reached thereunder through correspondence and conference, R. S. Ragsdale was improperly furloughed February 7, 1958.

2. That accordingly the aforesaid employe be restored to service in the same capacity and status he occupied from December 27, 1949, until furloughed Feb. 7, 1958, and that he be compensated for all time lost.

EMPLOYES' STATEMENT OF FACTS: During June and July, 1949 the following carmen painters were furloughed:

E. L. Rotureau, Savannah, Georgia
R. S. Ragsdale, Montgomery, Alabama
J. J. Petras, Sanford, Florida

Ragsdale and Petras were offered employment on other railroads but, because of their age (over 45), both were rejected. The record does not indicate Rotureau's employment possibilities but he, too, was over 45 years of age and naturally fell in the same category of ineligibility for employment on other roads.

This reduction in painter forces at the points mentioned left us without any painter at Savannah, Ga. and Montgomery, Ala. and only one at Sanford. Because of this situation, coupled with the fact that all three employes had rendered years of very satisfactory service and because other than painters were being used to perform such paint work as developed at Savannah, Ga. and Montgomery, Ala. in violation of Rules 402 and 27(a) and (d) of the then effective agreement — 1946 Edition, copies of which are filed with Members

in the painter's classification of work that he would be permitted to perform any carmen's work he was capable of doing. No where in that letter is it stated or inferred that Mr. Ragsdale was to establish seniority as a carman.

Submitted herewith as carrier's Exhibit B is letter dated December 22, 1949, from Mr. White to Mr. Winters, acknowledging Mr. Winters' letter of December 15, 1949, in which he states Mr. Ragsdale would be recalled as a painter. Here again there is no statement or reference that Mr. Ragsdale would establish seniority as a carman.

Submitted herewith as carrier's Exhibit C is letter dated December 22, 1949, from superintendent motive power White, to Mr. R. H. Duncan, master mechanic at Montgomery, Ala., in which he directed Mr. Duncan to recall Mr. Ragsdale as a painter, which is in direct accord with the understanding reached with Mr. Winters.

As will be noted from these exhibits, Mr. Ragsdale did not establish seniority as a carman through any understanding reached as a result of correspondence and conference as alleged by the organization.

Mr. Ragsdale certainly did not establish seniority as a carman under the controlling agreement and he likewise did not establish seniority as a carman through any understanding reached through correspondence and conference. Therefore, when the need for a painter at Montgomery ceased to exist, the carrier was within its rights to furlough Mr. Ragsdale as it did, without violating any agreement or understanding. Carrier regrets that it was necessary to furlough Mr. Ragsdale at Montgomery, but is glad it was able to employ him as a painter in Waycross, Ga., on March 10, 1958, where he has been working as such ever since.

The organization is asking your Board to compensate Mr. Ragsdale for all time lost from February 7, 1958, until restored to service at Montgomery, Ala., in the same capacity and status he occupied from December 27, 1949, to February 7, 1958. Mr. Ragsdale's status, as shown above, during that period was that of **painter** and when the need for a painter ceased to exist he was properly furloughed. Therefore, this claim is without merit and carrier respectfully 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.

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

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

Claimant Ragsdale, with seniority as a painter at Montgomery, Alabama, as of August 29, 1922, was furloughed effective February 7, 1958, and at the same time William Brown, a previously furloughed Car Repairer, was recalled to service there. Since March 10, 1958, claimant has been employed as a painter at Waycross, Georgia. His claim is for pay during the period from February 7 to March 10, 1958, on the ground that he occupied a dual status as Painter and Car Repairer, effective December 27, 1949, and therefore

should not have been replaced by Car Repairer Brown, whose seniority date was October 13, 1950.

The record shows that in 1949 claimant was the only painter employed at Montgomery and was furloughed for want of sufficient painting work. The rule for a craftsman's performance of work of another craft when it was insufficient to warrant employing a craftsman of that craft was not then effective in Montgomery, and there was a shortage of Carmen.

Accordingly, with reference to claimant and another painter similarly situated at Savannah, Georgia, the General Chairman negotiated an agreement with the Superintendents of Motive Power at those points, which was evidenced by his letter of December 15, 1949, to the Local Chairman, with copies to the Superintendents of Motive Power, as follows:

> "In handling this matter, it has been our contention that Rule 402 and Rule 27(a) along with Appendix VI are controlling. We have not, however, been unmindful of the provisions of Rule 27(d). With this in mind and being under the impression that the Car Repairer's Roster at Montgomery and Savannah is presently exhausted, we have expressed a willingness for painter Ragsdale and painter Rotureau to be restored to service as painters and to perform all paint work developing at their respective points and, when not busily occupied in the painters' classification of work, they are **permitted** to perform any Carmen's work there available and which they are capable of doing." (Emphasis added)
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> "Under this arrangement, the force of Car Repairers could be increased at either point without interfering with the employment of the two painters; however, it is not contemplated that a Car Repairer will subsequently be furloughed and the painters thereafter be **permitted** to perform Carmen's work." (Emphasis added).

On December 22, 1949, the Superintendent of Motive Power at Montgomery replied to the General Chairman as follows:

> "We are handling this matter in line with your letter of December 15th addressed to Messrs. E. M. Morrison and N. J. Lindsey. Mr. Duncan has been instructed to recall Mr. Ragsdale and allow him to perform all painting necessary and in spare time he can use him in repairing cars."

These two letters either consitute or evidence a special agreement between the Organization and the Carrier somewhat similar to that between another system federation and another carrier, which this Division, sitting without a referee, enforced by its award 66.

The contention is that thereby "Painters Rotureau and Ragsdale were restored to service as combination painters-car repairers", — in other words, that each then attained the additional status of car repairers.

It is further argued that the intention was to state in the letter of December 15, 1949 that "it is not contemplated that a senior Car Repairer will subsequently be furloughed and the painters thereafter be permitted to perform Carmen's work", but that the word **"senior"** was inadvertently

omitted. It is urged that such an interpretation is shown by the fact that Carmen with seniority junior to December, 1949, have actually been furloughed ahead of Claimant.

The trouble is that this Board has no power to add a word to the agreement as set down by the parties and thus materially change its meaning; that it has not the power of a court of equity to reform an agreement so as to make it state what either party contends was actually intended but not stated; that the contention was denied and was not proven by evidence; and that practice cannot be used to interpret an unambiguous provision as meaning something else.

Whether or not the word "senior" was inadverently omitted, the special agreement as expressed in the letters of December 15 and 22, 1949 does not indicate any intention to establish a dual classification of painter-car repairer or to award Claimant a car-repairer's status as of that time. The December 15 letter referred to Rule 27(d), which provides that in certain circumstances mechanics of one craft may do work of another craft; it then proceeded to state a willingness for the two painters "to be restored as painters" and "when not busily occupied in the painters' classification" to do other carmen's work. The letter of December 22 likewise said that claimant would be called to perform painting work and "in spare time" could be used in repairing cars. There was no suggestion, either in Rule 27(d) or in the letters, that by doing other Carmen's work in their spare time they would acquire any status in such other classification. The first letter leaves the inference that this was a one-shot arrangement, made in consideration of an existing shortage of men, without an intent to interfere under normal conditions with craft status and seniority rights.

But if the special agreement did amend the general Agreement so as to provide a new dual seniority roster-division, or to give claimant seniority in some other craft than his own, it lapsed the following year under Rule 12(h) because it was not bulletined and the lack of such bulletining was not protested. The seniority lists as posted then became final.

Upon a reduction in forces Carrier must determine its Employes' seniority rights in accordance with Rule 12, including section (h); it violates the Agreement if it fails to do so.

In that and other respects unnecessary to discuss here the present case differs materially from that involved in Award 66.

The Carrier did not violate the Agreement by furloughing Claimant, whose rights were as a Painter, and by recalling a Car Repairer to service.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1961.