Award No. 3921
Docket No. 3794
2-GC&SF-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Carroll R. Daugherty when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 97, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.-C. I. O. (Carmen)

GULF, COLORADO AND SANTA FE RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1—That under the rules of the controlling agreement Carman J. B. Hall was unjustly dealt with when his name was removed from the Carmen's Seniority Roster at Cleburne, Texas.

2—That accordingly the Carrier be ordered to restore the above named Claimant to the Carmen's Seniority Roster with his original seniority date of May 18, 1956 with all other rights unimpaired and additionally compensate the Claimant in the amount of eight (8) hours each day plus any overtime the employe his junior made or could have made retroactive and including March 23, 1959 and to continue until correction and payment have been made.

EMPLOYES' STATEMENT OF FACTS: J. B. Hall, hereinafter referred to as the claimant, was employed by The Atchison, Topeka and Santa Fe Railway Company (Gulf Lines), hereinafter referred to as the carrier, as a carman at Cleburne, Texas, where the carrier maintains car building and repair track forces.

The claimant had a carman's seniority date of May 18, 1956 at Cleburne, Texas, and worked until furloughed in force reduction on April 25, 1957.

On July 14, 1957 the claimant went to Snyder, Texas, and was employed as a carman under the provisions of Mediation Agreement A-4061, and worked until he resigned for personal reasons on January 21, 1959. On January 22, 1959 the claimant's name was removed from the Cleburne, Texas, Seniority Roster, at which time and from which point he was in a furloughed status.

On March 6, 1959 the Local Chairman, J. A. Browder, protested the removal of the claimant's name from the carmen's seniority roster.

On March 16, 1959, approximately fifty (50) carmen were recalled to service under Rule 24(d) of the current working agreement, even though they were junior in seniority to the claimant, and have continued to work.

the carrier's further position that the claim of the Employes, quoted on Page 1 hereof, ceased as of August 25, 1959, when Mr. Hall was re-employed as carman at Cleburne, Texas, and the only period involved in the claim is from March 23, 1959, to and including August 24, 1959. In fact, an understanding to that effect was reached by the parties here involved, as outlined in the last paragraph of letter dated September 4, 1959, from the carrier's vice president and general manager to the brotherhood's assistant general chairman, quoted in full on Pages 14 and 15 hereof. This was also confirmed by Assistant General Chairman Jenkins during conference held at Galveston, Texas, on November 11, 1959.

In addition, the carrier's records also reflect that Claimant Hall was employed as a switchman on the Carrier's Northern Division from May 20, 1959 to August 24, 1959, during which period he earned $1,487.49. If the Board should find for some reason, which is not in evidence at the present time, that the employes' claim in this dispute should be sustained, the monetary compensation claimed in behalf of Claimant Hall should be reduced by the amount of the wages paid him by the carrier for his services as a switchman and also by any other wages earned by him from the carrier or in outside employment during the period involved in the claim. In connection with the propriety of making such deductions, the Board's attention is respectfully directed to Second Division Awards 1180, 1282, 1638, 2653, 2811 and 3084 and Third Division Awards 6074, 6362, 6528 and others.

In conclusion, the carrier respectfully reasserts that the employes' claim in the instant dispute is entirely without merit or support under the governing agreement rules and it should be denied in its entirety for the reasons set forth herein.

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, laid off at Cleburne by carrier under Rule 24(a) of the schedule, obtained employment in his craft at another point, Snyder, not through the exercise of seniority under said agreement but through the provisions of Mediation Agreement No. A-4061. On January 19, 1959, he resigned, giving notice thereof in the following letter addressed to H. E. Anderson at Slaton:

> "I am resigning from the position of Carman at Snyder effective January 22, 1959. Am returning all rule books issued me. I am hoping this will clear my record. My present address is 2505 31st Snyder, Texas. Send all my checks to Snyder c/o Santa Fe Depot."

He now asks this Division to rule that carrier improperly denied him at Cleburne the rights vouchsafed him in Rules 24(d) and 28(a).

The issue here comes down to one of fact: Did claimant resign merely from his position at Snyder, retaining his restoration rights at Cleburne? Or did he, as carrier contends, make and intend to make as of resignation date a

complete severance from carrier's services at any and all points? If the resignation was limited to Snyder, the Division must hold in principle with petitioner; if the resignation was complete, the Division must rule with carrier.

On this issue of fact the Division asks itself whether, on balance, carrier's interpretation of the above-quoted letter of resignation was arbitrary, capricious, unreasonable, or discriminatory. The Division finds that claimant did indeed use words "at Snyder" in the first sentence of said letter. And if this sentence stood alone in the letter, there might be ground for finding that the resignation was limited to said location. But in view of the further language in the letter in respect to turning in all rule books and clearing his records, the first sentence must be held at most ambiguous and at least merely indicative of the point from which claimant was making his complete severance effective. On balance, carrier's interpretation of claimant's letter may not be found to have been arbitrary, capricious, or unreasonable.

But was not carrier's interpretation and decision discriminatory in the light of petitioner's evidence on carrier's alleged different treatment of several other employes? The Division finds that this question requires a negative answer, in view of (1) carrier's repudiation in principles of a local supervisor's decision in respect to employes Bullard and Leverett; and (2) carrier's persuasive differentiation of the facts in respect to employe Doty. It may not be held that carrier's decision on claimant was contrary to accepted past practice and therefore discriminatory.

None of the above may be interpreted as reversing the principles set forth in Awards 1837 and 3255, both of which involved different sets of facts.

The Division accordingly must find that the instant claim does not merit sustention.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1962.

DISSENT OF LABOR MEMBERS TO AWARD 3921

The majority quote clear and unambiguous facts and then for reasons best known to themselves choose to evade them. Claimant's letter of resignation at Snyder is so explicit it requires no interpretation. There is no justification for even implying that claimant had any intention of forfeiting his seniority at his home point. Seniority is too valuable to be lightly disregarded as the majority has done here.

Edward W. Wiesner
C. E. Bagwell
T. E. Losey
E. J. McDermott
James B. Zink