

**Award No. 4162
Docket No. 4133
2-CRI&P-MA-'63**

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Harvey Daly when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. — C. I. O. (Machinists)**

**CHICAGO, ROCK ISLAND & PACIFIC
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES:

1. That Machinist Helper J. R. Oldham, employed as such at Silvis, Illinois, Shops, under the current agreement rules was improperly furloughed from October 11, 1960, to October 31, 1960, both dates inclusive.

2. That accordingly the carrier be ordered to compensate Machinist Helper J. B. Oldham for the period of October 11, 1960 to October 31, 1960, both dates inclusive, at the applicable rate of pay effective during that period.

EMPLOYEES' STATEMENT OF FACTS: On September 29, 1960, Machinist Helper J. B. Oldham, hereinafter referred to as the claimant, reported to the foreman at the Diesel Pit, Silvis, Illinois Shops, where he was employed, that he was ill and would be off work for several days. On October 10, 1960, the claimant, in accordance with the agreement, reported in person to General Foreman Herdt, at the Diesel Pit, and informed him that he would return to work the following day, October 11, 1960, at which time General Foreman Herdt informed the claimant that there was no job for him, and that he would not be allowed to return to work. The claimant had not been laid off, and there were helpers junior to the claimant who had not been laid off.

Claim was filed, and on December 1, 1960, General Foreman Herdt's decision was appealed to Master Mechanic J. H. Whipple.

Master Mechanic Whipple replied under date of December 12, 1960 to which the local chairman replied under date of January 16, 1961. On January 23, 1961, the claim was appealed to Mr. G. E. Mallery, Vice President - Personnel, and under date of March 15, 1961, Mr. Mallery denied the appeal.

in the Promotional Agreement providing for machinist helpers to be temporarily advanced to machinists on a seniority basis."

That is true. Displacement rights by virtue of seniority come from Rule 51, not the promotional agreement, just as rights to be retained in service in a force reduction by virtue of seniority come from Rule 23, not the promotional agreement.

Some five days later, after Mr. Oldham elected not to bump, the three junior men were cut off in force reduction, but this did not affect Mr. Oldham — he was already in a voluntary layoff status because of his election. So, actually, the carrier was never required to give Mr. Oldham a lay off notice under the rules. He was never laid off because of a force reduction. He was displaced — could have bumped — did not — thereby placing himself in inactive status.

In conference the organization cited Second Division Award 1997, but this award appears to sustain the position of the carrier here.

In any event, however, and without withdrawing from our consistent position one bit, even if Mr. Oldham were laid off in force reduction without notice to which he might be entitled, the maximum amount to which he would be entitled would be four (4) days under Rule 23. Four calendar days' notice is required to employees laid off in reduction of force which is in the case of Mr. Oldham. If an employee is laid off in reduction of force without notice, he is entitled only to pay for each of the following four calendar days which would have been work days for him. See Awards 1500 and 3109 among others.

In conclusion, the carrier feels it has clearly established that its position is correct, consistent and sound and the position of the organization is without merit as it has no degree of consistency necessary to contract interpretation at all. The carrier contends the position of the organization is invalid in the first instance, and in the second instance the claim as presented has absolutely no basis under any rules of agreement. The 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 employee or employees involved in this dispute are respectively carrier and employee 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 waived right of appearance at hearing thereon.

On September 29, 1960, Machinist Helper J. B. Oldham, who worked at the Carrier's Diesel Pit Shop, Silvis, Illinois, reported to the management that he was ill and would be absent several days.

On October 1, 1960, while Claimant was absent because of illness, he was bumped, according to Carrier's unsupported assertion, by Machinist Helper John A. Barnwell.

On October 10, 1960, the Claimant informed his General Foreman that he would return to work on October 11, 1960. The General Foreman told the

Claimant that he had been bumped, and in order to work he (Claimant) would have to bump one of the junior upgraded machinists—which the Claimant declined to do.

On October 15, 1960, the three machinist helpers—who were junior to the Claimant—“were laid off in force reduction”.

On November 1, 1960, the Claimant was granted a disability annuity.

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Carrier contends that the Claimant, on the basis of his helper seniority, was properly advised that he could bump one of the junior upgraded helpers; that the Claimant “refused to be so upgraded”; and that the “management did not inform Mr. Oldham he was laid off”.

The Organization asserts that the Claimant—in keeping with the provisions of Rule 23—was not given four-days’ notice before being laid off; that the Claimant’s name did not appear on lay-off notices posted on bulletin board; that neither the Local Chairman nor the General Chairman received the required notice of Claimant’s lay off; that the Claimant could not have displaced any of the upgraded helpers; and the Claimant’s seniority rights were violated when he was improperly laid off.

The pertinent provisions of the rules involved are as follows:

“Rule 23. REDUCTION OF FORCE. When forces are reduced at any point, or in any craft or subdivision thereof, seniority as per Rule 27 shall govern.

“Four (4) calendar days notice will be given employes affected before reduction in force is made. A list of names of men affected will be posted on bulletin board and a copy of such list will be furnished to the local committee and general chairman.

“Rule 27. SENIORITY. Seniority of employes in each craft covered by this agreement shall be confined to the point employed for each of the following crafts:

CRAFT

“Machinists

SUBDIVISION

Machinists

Machinist Helpers

Machinist Apprentices”

For a just determination of this case the Board need go no further than the Carrier’s erroneous contention in its Ex Parte Submission that the Claimant was not laid off. The Carrier’s position is destroyed by Carrier’s Exhibit “B”—which is Master Mechanic J. H. Whipple’s letter dated December 12, 1960, and which reads in part as follows:

“ . . . it is my belief that the circumstances surrounding Mr. Oldham’s case was properly handled and that we are correct in waiting before giving him his lay off notice, Form G-126 on October 12th

after we learned that he had been O. Ked for work on October 10th . . ." (Emphasis ours.)

The above excerpt irrefutably indicates that the Carrier laid off the Claimant. The record also indicates that the Carrier did not comply with the pertinent provisions of Rule 23. Accordingly, the Board rules the Carrier violated the Agreement and decrees that the Claimant receive 4 calendar days' pay at the pro-rata rate.

In the past this Board has expressed its disapproval of poorly prepared and improperly progressed claims. In this instance the Board wishes to commend Local Chairman S. B. Cooksey for the exemplary manner in which he handled this Claim on the property.

AWARD

Claim sustained to the extent set forth in findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 12th day of March, 1963.