Award No. 4187
Docket No. 4159
2-SLSF-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph M. McDonald when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 22, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. — C. I. O. (Carmen)

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the current agreement when, on April 6, 1959, it failed to notify or call Carman Helper R. S. Landers for service in accordance with his seniority.

2. That Carrier has continued, intermittently, to violate the current agreement on each occasion subsequent to April 6, 1959 that employes junior to Carman Helper R. S. Landers have been called for service in lieu of Mr. Landers.

3. That accordingly, the Carrier be ordered to compensate Carman Helper R. S. Landers for all time worked by employes junior to him on the seniority roster beginning sixty days prior to November 1, 1960.

EMPLOYES' STATEMENT OF FACTS: R. S. Landers, hereinafter referred to as the claimant, is an employe of the St. Louis-San Francisco Railway Company, hereinafter referred to as the carrier, and currently holds seniority date as carman helper as of October 24, 1955 at Kansas City, Kansas. He was furloughed account reduction of forces effective January 7, 1958 and filed his name and address with his supervisor and local committee at that time, such address remaining unchanged to the present date.

On and after April 6, 1959 at Kansas City, carrier notified a number of carmen helpers, both senior and junior to claimant, to return to service and in addition thereto, employed a number of carmen helpers who were in furlough status at other points on carrier's system, but who held no seniority at Kansas City. Among such furloughed carmen helpers who were employed at Kansas City were L. J. Patton and C. Wadley employed April 6, 1959; J. C. Reeves and H. C. Bryan employed April 7, 1959; B. A. Reef employed June 8, 1959 and J. L. Hill employed July 13, 1959. Employes junior to claimant have

"Date	Employe Worked	Carmen Helpers	Seniority
6- 8-59	B. A. Reef	J. H. Tucker	11-29-45
7-13-59	J. L. Hill	R. E. Wiggans	7-26-47

NOTE: Landers was 25th man below Harlan, and 19th man below Wiggans."

The following pertinent findings appear in First Division denial Awards Nos. 19616 and 19617:

> "The Division has held in numerous awards that unless Agreement rules otherwise provide, only those employes standing for service are entitled to make claim. See Awards 10350, 12661, 14519, and 17034."

It is abundantly clear that the claimant is a wrongful claimant and even if the claim were valid (which is denied) the claimant did not stand for the service to which he asserts a contractual right and, therefore, it should fail were it not already barred by the time limit rule.

The claim has neither merit nor agreement support and this Board is requested to so find.

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 waived right of appearance at hearing thereon.

Claimant contends that the carrier violated the current agreement, when on April 6, 1959 and intermittently thereafter it failed to call claimant in accordance with his seniority.

Claimant holds seniority date of October 24, 1955 at Kansas City as a carman helper. He was furloughed effective January 7, 1958.

On April 6, and 7, June 8, and July 13, 1959 carrier brought in six upgraded furloughed helpers from other points to Kansas City, had them work one day as carmen helpers at Kansas City, and then upgraded them the next day, and thereafter, it is carrier's contention, they performed no further service except in the upgraded class.

As of April 1959 seventeen of the 35 Carmen Helpers on the January roster at Kansas City had been selected for upgrading to work as carmen. Claimant was not so selected.

Claimant contends that there was a restoration of forces commencing April 6, 1959 and that his seniority rights were violated because he was not notified and properly restored.

Claimant further contends that this is a continuing violation and claims pay for all time worked by employes junior to him beginning sixty days prior to November 1, 1960.

Carrier contends that the claim must fail for want of timeliness, since the violation, if any, (and it denies any) occurred on April 6 and 7, June 8 and July 13, 1959 and the claim was not presented within 60 days from the date of the occurrence under Article V Section 1(a) of the 1954 Agreement.

However, Section 3 of the same Article provides that a claim for an alleged continuing violation may be filed at any time, and claimant holds that this has been a continuing violation.

First, we must hold that there was a violation of Rule 27(d) of the controlling agreement, when on the April, June and July dates, the carrier brought in men from another point and put them on for one day as carmen helpers without notifying claimant. The fact that other furloughed carmen helpers at Kansas City had senior standing for service to claimant is not persuasive because of the admitted fact that the outside point helpers were worked for one day as carmen helpers at Kansas City.

Carrier's circuitous method of then upgrading the outpoint men is not provided for in the agreement, but neither is it prohibited.

While claimant may, and undoubtedly does feel that the carrier thus put in motion a continuous course of conduct which has deprived him of his work, we are forced to conclude that the damage was done on each of the dates of April 6, and 7, June 8 and July 13, and since claimant was not in the upgraded class his claim matured on these specific dates and should have been properly processed by him within 60 days of each occurrence. Not having done so the claim must now be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of April, 1963.