

Award No. 4314
Docket No. 3936
2-CRI&P-FO-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Charles W. Anrod when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Firemen & Oilers)**
CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That Laborer Pat Foster, R. C. Wingfield and Roy Kyle, employed at Wister, Oklahoma have been since November 25, 1959, denied their seniority and rights to service when they were furloughed effective November 25, 1959, and all of the work regularly assigned to and performed by them prior to November 25, 1959 was transferred and assigned, in part, and in whole to employes of other crafts and classes, and more particularly to employes not in the hire of the carrier, specifically the Watkins Oil Company of Poteau, Oklahoma.

2. That accordingly, the Carrier be ordered to re-establish the positions of Laborers Pat Foster, R. C. Wingfield and Roy Kyle at Wister, Oklahoma, and compensate them at the applicable rate of pay for all time lost effective with November 26, 1959.

EMPLOYEES STATEMENT OF FACTS: For many years, since its very inception, the carrier maintained a shop point at Booneville, Arkansas, and in later years operated with a reduced force of laborers whose duties included the meeting, servicing and supplying of through Freight and Passenger Trains.

With the development of fueling problems, the carrier established fueling facilities at Wister, Okla., a distance of 50 miles west of Booneville.

Effective with January 15, 1959, the Laborers at Booneville—Pat Foster, R. C. Wingfield and E. A. Perry, along with all of the work they were performing at Booneville, servicing and supplying through trains, was moved to Wister, Okla., establishing three positions of laborer at that point on that date.

Effective with January 31, 1959, E. A. Perry, following a physical examination by a carrier doctor, Dr. P. W. Hoover, was determined physically unable to perform the duties of Laborer at Wister, and subsequently sought and was awarded a disability annuity.

and that this carrier has the right now as formerly to purchase fuel oil from oil companies, the purchase price of which includes delivery direct, as needed, to our diesel locomotives at Wister as well as any other point and which fuel oil does not become our property unless and until so delivered. Accordingly, on basis of the facts in this case, we respectfully request denial of the claim.

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.

The Carrier maintained a fueling station at Wister, Oklahoma. The facilities consisted of a pumping station, a storage tank car, and auxiliary tank cars from which fuel oil was pumped into the storage tank car. Diesel engines were then fueled from the storage car. In November, 1959, the Carrier discontinued the fueling station. Thereafter, the fuel company from which the Carrier purchases the fuel oil has fueled the diesel engines directly from its tank cars. On the average, one diesel engine has been so fueled per day and the time consumed for this operation is about five to six minutes per engine.

Prior to November, 1959, the three Claimants, P. Foster, R. Kyle, and R. C. Wingfield, were employed as shop laborers at Wister. Their work primarily consisted of handling the fuel facilities. They also supplied cooling and boiler water for trains. As a result of the discontinuance of the fuel facilities, their positions were abolished and they were furloughed, effective as of November 25, 1959. The supplying of cooling and boiler water was then transferred to the train and engine crews. The Claimants filed the instant grievance in which they contended that the Carrier violated their employment and seniority rights. They requested that the Carrier be ordered to re-establish the positions formerly held by them and to compensate them for all time lost at the pro rata rate. The Carrier denied the grievance.

In support of their claim, the Claimants mainly rely on Rule 1 (Scope) of the applicable labor agreement which reads, as far as pertinent, as follows:

“These rules govern the hours of service, working conditions and rates of pay of the classes of employes shown below, working in and about shops, car yards and engine terminals. . . .

“Group B . . . Shop Laborers . . .”

The law of labor relations is well settled that the intent and purpose of a labor agreement normally are to govern the rates of pay, hours of work, and other conditions of employment of the employes covered by it. “The result is not, however, a contract of employment . . . ; no one has a job by reason of (the labor agreement) and no obligation to any individual ordinarily comes into existence from it alone.” See: *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332, 335; 64 S. Ct. 576, 579 (1944). It follows that, in the absence of a specific provision to the contrary, as is here the case, and employer is not required by a labor agreement to retain an employe for whom sufficient work

is no longer available. See: Awards 3270 and 3304 of the Second Division. Specifically, seniority rights provided in the labor agreement do not guarantee permanent employment but only assure an employe of preference for a job if and when sufficient work is available. See: Award No. 4312 of the Second Division.

Applying the above principles to this case, we have reached the following conclusions:

The evidence on the record considered as a whole convincingly proves that, after the discontinuance of the fuel station in question, sufficient work was not available at Wister which would reasonably have justified the continued employment of the three Claimants. Particularly, the available evidence discloses that the time consumed by the outside fuel company in fueling diesel engines merely amounts to a few minutes per day. In addition, the record is devoid of any evidence of indication that the supplying of cooling and boiler water requires any appreciable time. Neither Rule 1 nor any other provision of the labor agreement imposes upon the Carrier an obligation to retain in its service employes who are not needed.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of October, 1963.

LABOR MEMBERS DISSENT TO AWARD 4314

The record reveals that the carrier furloughed the claimants effective November 25, 1959, and assigned a part of their duties to train and engine service employes and contracted a part to an outside oil firm on the basis that it was no longer economical to retain the claimants in employment.

The fact that it may be less expensive to have the work performed by others is not material—See Second Division Award 1866. We also must point out that work covered by Agreement cannot be contracted to others—See Second Division Award 3177.

We must dissent from the finding of the majority in Award 4314.

/s/ James B. Zink

/s/ C. E. Bagwell

/s/ T. E. Losey

/s/ E. J. McDermott

/s/ R. E. Stenzinger