Award No. 4336

Docket No. 3975

2-ACL-CM-'63

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

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

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF THE EMPLOYES: (A) That under the controlling Agreement, Painter C. R. Sullivan, Waycross, Georgia, who was furloughed effective July 3, 1959, was not notified in accordance with the provisions of Rule 16(d) to return to work when the forces in the Car Department were increased as shown by Bulletin No. 211, dated July 22, 1959.

(B) That accordingly, the ACL Railroad be ordered to compensate Painter, C. R. Sullivan for 5 days at pro rata rate, which was the time lost account of the ACL Railroad neglecting to notify him to return to work when the forces were increased effective July 27, 1959.

EMPLOYES' STATEMENT OF FACTS: The Atlantic Coast Line Railroad Company, hereinafter referred to as the carrier, employs at its Waycross, Georgia, Shops Painter C. R. Sullivan, hereinafter referred to as the claimant.

On July 3, 1959, the claimant was furloughed, when notified by bulletin that he was furloughed the claimant filed his address with Mr. R. W. Tonning, Jr., Shop Superintendent. He also addressed a note to Local Chairman Bill Hughes, advising that his address while furloughed would be: Route 1, Box 282 A, Pinetown, N. C.

The forces in the car department in the carrier's Waycross, Georgia, shops were increased effective July 27, 1959, and the claimant was not notified until August 3, 1959, thereby causing him to lose 5 days work.

This claim has been progressed successively on appeal, as prescribed under the controlling agreement, up to and including the highest designated officer with whom disputes are to be handled and the carrier has consistently declined to make adjustment.

work on July 27. Nevertheless, when it was learned that claimant had been living in a boarding house in Waycross, carrier endeavored to locate him at the address given, but he had moved prior thereto.

Carrier's records at Rocky Mount and Waycross contain a record of every instance that claimant filed an address and surely if he had filed one at Waycross when he was furloughed for vacation, as he alleges, that record would also have been placed in his file along with others.

The truth of the matter is, claimant was furnishing information relative to his whereabouts to his home station at Rocky Mount and neglecting to extend the same information to Waycross, the point where he was working and living. Therefore, when it became necessary to recall claimant on July 27, 1959, the forces at Waycross had no knowledge of his whereabouts and it is incumbent upon claimant to prove otherwise.

Carrier had no reason to show any discrimination or partiality with respect to this one individual or deny him his right to return to work. The other employes returned to duty at and on the specified date and, if claimant had notified the forces at Waycross where he could be reached, he would have been shown equal consideration.

The monetary loss sustained by claimant was due entirely to his own neglect, *not carrier's, and the Board is respectfully requested to so hold.*

Carrier reserves the right, when it is furnished with ex parte petition filed by the petitioner in this case, to make such further answer and defense as it may deem necessary in relation to all allegations and claims which may be advanced by the petitioner and which have not been answered in this initial submission.

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.

The Claimant C. R. Sullivan was employed as a painter in the car department of the Carrier's shops at Waycross, Georgia. Effective as of July 3, 1959, about 300 employes, including the Claimant, in said department were furloughed because of a reduction in the working force (see: Organization's Exhibit 1). The department was reopened on July 27, 1959, and all furloughed employes returned to work with the exception of the Claimant. He returned to work on August 3, 1959.

He filed the instant grievance in which he contended that the Carrier failed to notify him of the restoration of the working force in accordance with Rule 16(d) of the applicable labor agreement. He requested compensation at the *pro rata* rate for all time lost from July 27 to August 3, 1959. The Carrier denied the grievance.

Rule 16(d) of the labor agreement on which the Claimant relies reads, as far as pertinent, as follows:

> "In the restoration of forces, senior laid off men . . . shall be returned to their former positions, if possible, Employes desiring to avail themselves of the privileges of this rule must file their addresses with their employing officer at the time force is reduced . . . Failure to comply with this rule . . . will eliminate such employe from the service."

1. The Carrier has contended that the requirements of Rule 16(d) were waived in this instance by an agreement between its shop superintendent and the Local chairman of the carmen's craft. The Claimant has strenuously denied any such waiver. We need not resolve this discrepancy. Even if one assumes that Rule 16(d) was in full force and effect at all times here relevant, as asserted by the Claimant, his grievance is without merit for the reasons stated hereinafter.

2. Said Rule clearly and unambiguously prescribes that a laid off employe who wants to return to service **must** file his address with his employing officer at the time the working force is reduced. The Carrier has denied that the Claimant so notified it when he was laid off on July 3, 1959. The burden of proof convincingly to demonstrate that he complied with such requirement undeniably rests upon the Claimant. The evidence on the record considered as a whole is inadequate to prove that he filed his address with his employing officer at the time of the lay off in question. Apart from his own self-serving statement, the only relevant evidence submitted by him is a note from him to his local chairman reading: "My address while being layed (sic) off will be: C. R. Sullivan, Route 1, Box 282 A, Pinetown, N. C." The note is undated and thus does not permit us to find that it was written at the time of the layoff under consideration. Moreover, the record is devoid of any evidence or indication that the local chairman forwarded the Claimant's address to the latter's employing officer. Furthermore, Rule 16(d) plainly and unequivocally places upon a laid off employe the explicit obligation to file his address with his employing officer and not with his local chairman at the time of the lay off. In summary, we are unable to make a finding to the effect that the Claimant filed his address with his employing officer when the working force was reduced on July 3, 1959. His failure persuasively to prove that he complied with the requirements of Rule 16(d) is fatal to the maintenance of his grievance. See: Sanders v. Louisville and Nashville Railroad Co., 144 F. 2d 485 (CA-6; 1944); Hilton v. Norfolk and Western Railway Co., 194 F. Supp. 915 (U.S.D.C., South. D. of W. Va.; 1961).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 6th day of November, 1963.