Award No. 4487
Docket No. 4456
2-N&W-MA-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Jacob Seidenberg when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L.—C. I. O. (Machinists)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current Agreement, the Carrier improperly assigned other than Machinists to perform Machinists' work from August 16th through October 7, 1961.

2. That accordingly, Carrier be ordered to compensate Machinists (listed below) working at Shaffers' Crossing Roundhouse, for eight (8) hours for each day, at the pro-rata rate of pay, for the aforesaid violation.

A. L. Robertson	—	August 16th and 23rd
M. T. Wilbourne	—	August 17th and 18th
H. G. Gross	—	August 19th and 26th
G. D. Bayse	—	August 20th and 27th
B. L. Waid No. 1	—	August 21st
R. L. Bishop	—	August 22nd and 29th
S. I. Graham	—	August 28th
T. F. Dixon	—	August 30th and Sept. 6th
F. E. Harrison	—	September 2nd
Frank Harner	—	Sept. 3rd and 4th and 10th
M. L. McClure, Jr.	—	September 5th
J. C. Stott	—	September 9th
R. E. Lovern	—	September 23rd

R. J. Adams	—	Sept. 25th and Oct. 2nd
M. T. Scott	—	Sept. 26th and Oct. 3rd
J. R. McLain	—	Sept. 27th and Oct. 4th
J. B. Otey	—	September 28th
J. W. Oakey	—	September 29th
W. E. Siler	—	October 7th
L. P. Bell	—	Sept. 11th
R. D. Sandridge	—	Sept. 12th
Frank Helvestine	—	Sept. 13th
J. P. Stevens	—	Sept. 14th
J. R. Eaton	—	Sept. 15th
L. G. Lucas	—	Sept. 18th
W. M. Kingrey	—	Sept. 19th
E. O. Leftwish	—	Sept. 20th

The above days totaling 304 hours from August 16th through October 7th, 1961.

EMPLOYES' STATEMENT OF FACTS: On the days enumerated above, the employes named, hereinafter called the claimants, held regular jobs as machinists and were on their rest days, on the Norfolk and Western Railway Company, hereinafter called the carrier, at its Shaffers' Crossing Shops, Roanoke, Virginia.

On the dates enumerated above, the carrier employed Mr. C. L. Williams who had no seniority or status with the carrier except that he was being carried on an office list showing that he had completed his apprenticeship and "NOT RETAINED IN SERVICE".

During the time involved in this dispute, at least 250 machinists were laid off by the carrier at carrier's East End Shops in Roanoke. None of those laid off machinists, or laid off machinists at other points, were contacted and offered work at Shaffers' Crossing.

Claim was filed on September 6, 1961 and handled through all stages in accordance with the agreement without adjustment by the carrier officials.

The agreement effective September 1, 1949, as subsequently amended, is controlling.

POSITION OF EMPLOYES: It is respectfully submitted and the record so shows that the claim was handled and progressed through all stages in accordance with the agreement and that the carrier is in violation of said agreement when it used the services of Mr. Williams at Shaffers' Crossing to perform Machinists' work. The agreement explicitly provides that:

> "Apprentices who have completed their apprenticeship and not retained in the service, will be placed on an office list showing the date and time they complete their apprenticeship.

for employes to make themselves available for such relief work. Certainly there can be no justifiable claim by regularly assigned Machinists for such work, as has been made in this claim.

Further, on September 4, 1961, Labor Day, Williams did not work. Thus, he could not possibly have performed Machinist's work on that date, as alleged by the employes.

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 resolution of these claims devolves upon whether an apprentice (Mr. Williams) who has completed his service, but has not been retained into the Carrier's service may be treated as, or regarded as, the equivalent of a furloughed employe and therefore be contractually eligible to be used for relief work by the Carrier.

The Division finds that an apprentice who has completed his training under these circumstances is not, and cannot stand in the shoes of, an employe furloughed from the Carrier's service. Such an individual cannot be used for relief work because he is not a furloughed employe and he has earned no seniority and he is not to be found on any seniority register. The Division believes that the office list cited by the Carrier cannot be construed to be an extension of an existing seniority register. This list appears to be more closely akin to an administrative device which the Carrier maintains for its internal convenience.

In this industry, seniority lists are the apex of, and occupy too paramount a position in the relationship between the parties to be created by implication. In so basic a matter, only the express agreement of the parties can determine what constitutes a seniority register and who are on it. The Division cannot do this by inference or implication.

In addition the Division cannot find the apprentice to be the equivalent of a furloughed employe because the Carrier cannot point to any position from which he has been furloughed. Dictionaries define furloughs generally as long or extended leaves. The apprentice here was not on any leave — long or short. He was an individual who had finally completed his training — that part of his job career is completed, but unfortunately for him, he had not received any job which would enable him to continue his relationship with the carrier in any seniority earning capacity.

It is undoubtedly true that the apprentice upon the completion of his training is a certified journeyman machinist. But this is not responsive to the issue, because there are many certified journeymen machinists in this industry who are not eligible for relief work with the Carrier because they hold no seniority with it. Mr. Williams is in exactly the same contractual position as these other journeymen machinists until the Carrier utilizes him in a post where he begins to accumulate seniority.

The Division finds that in light of the foregoing findings that it is not necessary to deal with the other contentions raised in the record.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of March, 1964.

DISSENT OF CARRIER MEMBERS TO AWARD NO. 4487

It is regrettable that the majority found it necessary to give full weight to the erroneous contentions of the Organization and apparently had little regard for the facts which appear only in Carrier's submission in great detail as to how completed apprentices are handled on the Norfolk and Western, which is very different from other railroads.

This erroneous award gives very little hope, if any, to the young machinists of this Carrier who have been or who expect to be employed under the provisions of Memorandum Agreement No. 69.

This award ignores the provisions of Memorandum Agreement No. 69, when it holds in part, "Mr. Williams is in exactly the same contractual position as these other journeymen machinists until Carrier utilizes him in a post where he begins to accumulate seniority."

This is very strange reasoning in view of Memorandum Agreement No. 69 (Carrier's Exhibit B), which was negotiated with the Employes, including General Chairman Fox, in the year 1953. What was the purpose of this agreement if the completed apprentice "is in exactly the same contractual position as these other journeymen machinists"? The agreement provides that under certain conditions completed apprentices will go on the mechanic's seniority roster without ever working. It is not necessary that "Carrier utilizes him in a post where he begins to accumulate seniority."

The award further states, "This list appears to be more closely akin to an administrative device which the Carrier maintains for its internal convenience" and "In so basic a matter, only the express agreement of the parties can determine what constitutes a seniority register and who are on it."

Here again, if the office list is "an administrative device which the Carrier maintains for its internal convenience," there would have been no reason for the Carrier to negotiate Memorandum Agreement No. 69 with the Employes. Memorandum Agreement No. 69 was agreed to by all the General Chairmen and was "only with express agreement of the parties".

Clearly, proper recognition has not been given by the majority to the meaning and intent of Memorandum Agreement No. 69.

The award further provides, "The Division finds that in light of the foregoing findings that it is not necessary to deal with the other contentions raised in the record."

The contentions raised by the Carrier dealing with the fact the claimants were regularly assigned and suffered no loss of pay, that twenty-three days involved were for vacation relief, **and the undisputed contention that Williams did not work on one of the days claimed** (Carrier's submission, pages 3, 13), have not been covered by the award and cannot be lightly dismissed.

We can only conclude that the majority in reaching the decision in this award did so without properly considering that the provisions of Memorandum Agreement No. 69 had been in force since February 2, 1953, and that six shop crafts were signatories to the Agreement, and the practice to which this award has found to be wrong has been enjoyed by the six crafts without prior claims and that the Agreement's last paragraph provides:

> "This Agreement is subject to termination or change by either party only after thirty days' notice in writing."

and that the petitioning Organization does not ask that the Agreement be terminated.

It is very clear that in this dispute the majority has misinterpreted the intent and meaning of Memorandum Agreement No. 69, and in doing so has placed its future use and value in question.

For the reasons offered, we dissent.

P. R. Humphreys
H. K. Hagerman
F. P. Butler
W. B. Jones
C. H. Manoogian