Award No. 4669
Docket No. 4521-I
2-HB&T-I-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

C. M. WOMACK, PETITIONER

HOUSTON BELT & TERMINAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: Whether C. M. Womack, an employe of Houston Belt and Terminal Railway Company was improperly laid off on September 24, 1962.

PETITIONER'S STATEMENT OF FACTS:

I

Petitioner was employed by Houston Belt and Terminal Railway Company in 1927 and given a classification of carmen helper.

II

Petitioner was so classified until 1948 when he was told to show his classification as oiler.

III

Petitioner performed the same duties during the period of time that he was classified as a carmen helper that he performed after being designated to oiler.

IV

In September 1962 oiling was largely discontinued and petitioner was laid off. Although there were and still are persons performing the same duties as those performed by petitioner and having less seniority than petitioner.

V

These persons junior in seniority to petitioner were retained on the basis that they were Helpers, a classification being continued, while petitioner was an oiler and that this classification was being discontinued.

VI

Petitioner then submitted his grievance to the local chairman of his lodge who opposed the grievance.

VII

The grievance was then submitted to the lodge where it was held that petitioner had a valid grievance.

VIII

Petitioner then submitted his grievance to the general chairman of the lodge who upheld the local chairman.

IX

Petitioner's employment relation with Houston Belt and Terminal Railway Company is governed by "Agreement Between the Houston Belt and Terminal Railway Company and Brotherhood Railway Carmen of America" and the "Railway Labor Act."

ARGUMENT

Petitioner contends that he was improperly laid off because he was not given an opportunity to properly exercise his seniority.

Petitioner claims that "car oiler" was a designation given in 1948 to a group of Negro carmen helpers by order of the general car foreman at that time. The duties of the oilers consisted of helping car inspectors rebrass jounel boxes, closing car doors and oiling. An examination of the files of the Houston Belt and Terminal Railway Company should reveal that no one was classified as "oiler" prior to 1948. A check of the petitioner's Social Security account number should show that this company registered him as carmen helper with the Railroad Retirement Board in 1937.

In 1948 when petitioner's classification was ordered changed from helper to oiler he had twenty-one years seniority as a helper.

Although petitioner had twenty-one years seniority as a helper, he was told that "Rule 20" and "Rule 22" of the agreement denied him the right to exercise any seniority in the carmen craft since his sub-division classification of oiler was being discontinued.

This effectively wiped out thirty-five years of seniority. This action allowed persons to remain employed doing the same work as petitioner although classified as helpers who have less seniority than petitioner.

It is petitioner's contention that Rules "20" and "22" are for the purposes of protecting seniority rights and not abrogating them as this action has done.

Petitioner further contends that the agreement is not specific as to the exercise of seniority when an entire sub-division is discontinued and that "Rule 20" which provides for reduction in force and "Rule 22" which provides for the posting of seniority lists are not controlling.

When the entire sub-division of oilers was discontinued petitioner should have been allowed to exercise seniority in the carmen craft and more especially in the sub-division helper since he has twenty-one years seniority as a helper.

As the agreement does not specifically cover the discontinuance of a sub-division equitable principles must apply. These equitable principles certainly would not allow an employe with one day's seniority to remain employed

doing the same work as petitioner while petitioner is laid off. Yet this is precisely what has happened by the interpretation placed on these rules by the Company.

CONCLUSION:

Petitioner therefore contends that he was unfairly laid off on September 24, 1962 and wrongfully denied his right to exercise his seniority.

Therefore, petitioner asks that he be restored to service with seniority unimpaired and that he be compensated for all time lost, including vacation.

CARRIER'S STATEMENT OF FACTS: With the exception of supervisors, clerical employes and laborers, all of the employes in the carrier's car department are represented by the Brotherhood of Railway Carmen of America. That organization (hereinafter referred to as such) and five other mechanical crafts (machinists, boilermakers, blacksmiths, sheet metal workers and electrical workers) compose the mechanical section of the Railway Employes' Department of the AFofL-CIO, with System Federation No. 14 of which the carrier on August 16, 1950, executed the current working agreement, retro-effective September 1, 1949, duly on file with your division.

Rule 22 of that agreement is reproduced in its entirety as Exhibit A. The January 1, 1962, edition of the five seniority rosters provided for the craft of "Carmen" is carried as Exhibit B; it will be noted that the petitioner's name, with seniority date of "3-1-1927", heads the list of car oilers, as it continued to do on the current (January 1, 1963) edition. Both rosters were signed by two officers of the organization, as well as by carrier's master mechanic.

On September 23, 1962 (and for a long while prior to that date), petitioner had held a regular 7:00 A. M. - 3:20 P. M. daily-except-Monday-and-Tuesday assignment as car oiler, being the only regularly assigned car oiler in carrier's service at that time, although the seniority roster of car oilers carried eight additional men, junior to him; it was simply a matter of attrition over the years resulting from the steady increase in roller-bearing-equipped cars and in the substitution of journal pads for loose packing.

However, on September 17, 1962, the official in charge of carrier's car department, General Car Foreman W. L. Nicks, issued a bulletin which, in compliance with the applicable rule, abolished several positions, including the position of car oiler held by petitioner, effective at close of shift September 24, 1962. Since this effective date fell on Monday, the first of the job's two rest day, Sunday, September 23, 1962, was petitioner's last day of compensated service — a reproduction of his daily service card, showing that he claimed, with Foreman T. D. Duncan's approval, eight hours as a "Car Oiler", "oiling cars on Rip Track", for that day.

After his ensuing rest days he was allowed vacation pay for the next ten days, September 26 - October 5 inclusive, following which his status has been that of the senior furloughed car oiler, standing for any vacancy as a car oiler that develops, although it is most unlikely that one will develop — he has since been paid fifteen days vacation, in March of 1963, as his 1963 vacation allowance.

On October 16, 1962 Carrier's Master Mechanic A. B. Atkinson, under whose supervision General Car Foreman Nicks works, received a letter dated October 12, 1962, from Mr. W. H. Smith, vice-general chairman of the BRCofA, in which Mr. Smith told of Petitioner Womack's contention that he should be

put on his "former position as a carman helper". Mr. Atkinson's immediate reply of October 16, 1962 informed Mr. Smith that the petitioner had been on the car oilers' seniority list since 1941, some twenty-one years.

Nothing further on the matter appears in the record until a letter dated May 21, 1963 came addressed to carrier's "Personnel office", over the signature of Attorneys Washington, King & King, asking for the petitioner's "work record reflecting his job classification during the period of his employment". It stated that his "grievance" was "against the Joint Protective Board, Brotherhood of Railway Carmen of America", and in no way implicated the carrier, whose President & General Manager Alexander replied May 31, explaining the petitioner's status.

There followed another letter dated June 25 from Washington, King & King, this time addressed to Mr. Alexander, who replied June 27. Next came a letter from petitioner dated September 9, to which he attached a notice of his intention to file an ex parte submission of his grievance with you.

Then came a notice thereof from your Executive Secretary Sassaman under date of September 16.

POSITION OF CARRIER: It is carrier's position that the petitioner's grievance is wholly without basis because:

1. While obviously, from a glance at 1962's seniority rosters, there are persons on the carman helpers' roster with far fewer years of service than petitioner, just as obviously he is not on that roster — his name appears only on the car oilers' roster.

2. Unquestionably Rule 22 in its section (b) required that separate rosters be maintained for the "Sub-division" "helpers" and for the "Sub-division" "oilers" in the "Craft" "Carmen". While its "NOTE" might, under present circumstances, make this separation impracticable, undoubtedly when the separation was first made (Circa 1941) and at the time the current agreement was executed (August 16, 1950) such separation was considered "practicable". To merge these rosters now would require mutual action on the part of the parties (and quite a concession on the part of carman helpers) and there is nothing to indicate that such a merger might be desired by anyone, unless the registering of this grievance by the petitioner can be so considered, and it came not when the ranks of the assigned car oilers had been reduced to one (himself), but after that one assignment had been abolished.

3. Carrier calls attention to the concluding paragraph of Rule 22's Section (b); considering that each year since 1941 the petitioner's name has appeared only as a car oiler, one must conclude that petitioner's seniority status was "permanently established".

4. Petitioner's notice carries his claim "that since 1927 he has been classified as a car repairer helper although oiling journal boxes has been a part of his duty, but that at no time has he been classified as an oiler". Not only is this refuted by every seniority roster posted since mid-1941, but papers in his file clearly indicate that he considered himself a car oiler during that period. For example, Exhibit K shows his acknowledgment of blue flag instructions in either 1948 or 1949 and his receipt for Safety Rules April 1, 1949, both of which he signed as "Car Oiler". His daily service card for September 23 of last year, likewise shows his occupation as "Car Oiler".

5. The time limit rules for handling claims and grievances carried as Article V in the national agreement of August 21, 1954, unquestionably applicable to this petitioner, would make this grievance invalid, even were it otherwise sound. Since his seniority status was established long before January 1, 1955, Article V's Section 1(a) would have required filing of a grievance as to it within sixty days of that date — late 1962 was more than seven years too late.

Or if Mr. Smith's letter of October 12, 1962, could be termed an appropriate claim or grievance growing out of the abolishment of petitioner's assignment, it was timely, as was Mr. Atkinson's reply, but no "rejection of his decision" or "appeal" was forthcoming within Section 1(b)'s prescribed sixty days.

And if you adjudge Washington, King & King's letter of June 25 an appeal, certainly it was not within section 1(c)'s prescribed limits, and no intimation ever came from either that firm or the petitioner or any other source that the contents of Mr. Alexander's reply of June 27 were not completely acceptable.

In view of the above, the carrier requests that you decide that the grievance is without basis, and find that the petitioner was properly "laid off", but, even should you make no such determination, carrier urges denial on the basis of failure of the petitioner to adhere to time limit rules.

Insofar as the merits of the grievance are concerned, carrier would state that the petitioner and the firm of Washington, King & King were (as is clear from reading the correspondence), during the handling on the property, presented with the data used by carrier in support of its position. As is similarly clear from a review of that correspondence, carrier had no inkling during the handling on the property that the matter was being handled as a grievance under the provisions of the Railway Labor Act (as amended); it considered neither of the letters from Washington, King & King as an appeal, but simply a request for information in the pursuing of some disagreement with the BRCofA. When Mr. Alexander's letter of June 27 brought no response, he was justified in assuming that, certainly insofar as the carrier was concerned, the case was closed. Hence, no mention of the time limit rules was made in the handling on the property, which handling included no conference.

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.

There is no dispute between the parties as to the facts. The Claimant began his employment on March 1, 1927 as a laborer. Subsequently he became a car oiler and in this capacity he held seniority only as a car oiler. The Claimant, Mr. Womack, was laid off on September 23, 1962 in accordance with Rule 20 of the current agreement between the parties. Thereafter, since

there was no position on which he could exercise seniority, he has not worked for the Carrier.

The record discloses that Claimant was properly furloughed on September 24, 1962 in accordance with Rule 20(a).

AWARD

Claim of Employe denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice-Chairman

Dated at Chicago, Illinois, this 26th day of February, 1965.