

Award No. 4735

Docket No. 4559

2-C&O-CM-'65

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L.-C. I. O. (Carmen)**

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Southern Region)**

DISPUTE: CLAIM OF EMPLOYEES: 1. That the current agreement was violated, particularly Rules 153 and 177½, when Chester A. Carrington was denied seniority status as a bona fide carman on the Russell Car Shop carman seniority roster with seniority date of June 14, 1962, Chesapeake & Ohio Railway Company, Russell Car Shops.

2. That accordingly the Chesapeake and Ohio Railway Company be ordered to compensate Chester A. Carrington eight (8) hours each day, five (5) days each week subsequent to June 14, 1962, at the freight carmen applicable straight time rate of pay for the said violation.

EMPLOYEES' STATEMENT OF FACTS: The Chesapeake & Ohio Railway Company, hereinafter referred to as the carrier, operates a car repair shop at Raceland, Kentucky, referred to as the Russell car shops, at which freight cars are built, repaired and maintained. Chester A. Carrington, hereinafter referred to as the claimant, is employed at the carrier's Russell car shops as carman helper with seniority date as carman helper January 5, 1962. Claimant was employed at Russell Car Shops as carman helper. He resigned February 2, 1953. During the period of 1947 through February 2, 1953, Carrington worked 954 days as carman tentative; was reemployed January 5, 1962 as carman helper, and was promoted to carman tentative January 24, 1962, and worked 86 days to include May 24, 1962, as carman tentative making a total of 1040 days worked as carman tentative at the Russell car shops. Claimant, through his representative, general chairman of carmen, made application June 14, 1962, for a carman position as bona fide carman at the Russell car shops, due to several carmen tentative working on that date with a seniority date of June 14, 1962, on the carman seniority roster. The request was declined by the shop superintendent on date of July 16, 1962.

This dispute has been handled with the carrier up to and including the highest designated officer to handle such disputes, with the result that they have declined to adjust the matter.

(2) That reemployment does not reinstate the rights which such employe abandoned when he quit so as to give him super-seniority.

(3) That if it is held claimant's abandoned rights were reinstated upon reemployment, he could not be given bona fide carman seniority under the provisions of Rule 177½ and would have to be returned to the helper class.

(4) That the claim constitutes a reversal of position by the employes.

Having shown that the claim is without support on all counts, a denial award should be rendered.

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.

Rule No. 153 provides that any employe within the Agreement "who has served an apprenticeship, or who has had four years practical experience at car work", and who can perform the work of his craft or occupation in a mechanical manner, shall constitute a carman.

Rule 177½ provides (b) that mechanics-tentative, who on or after October 1, 1955, complete three years and nine months experience, shall be so notified as promptly as possible, that they must then within thirty days from the date of such notice elect whether to establish seniority as mechanics or to retain seniority as helpers and relinquish their positions as mechanics-tentative; (c) that one's failure to make the choice will be considered as an election to retain seniority as helper; and (d) if he elects to establish a seniority as a mechanic it will date from the day following completion of the required four years experience, which is defined (f) as not less than 1040 work days.

Claimant resigned from the Carrier's employ on February 2, 1953, after working 954 days as carman-tentative; he was re-employed on January 5, 1962, as carman-helper, on January 24, 1962, was promoted to carman-tentative, and on May 24, 1962, had worked 86 more days in that capacity, thus completing a total of 1040 work days in it.

The Employes contend that since nothing in Rule 153, Rule 177½, or elsewhere in the Agreement, requires the four years or 1040 working days to constitute one uninterrupted period of employment, Claimant's 1040th day's work on May 24, 1962, entitled him to the full status of carman.

The contention must be sustained. If the parties had desired to require that the 1040 work days must constitute one continuous period of service, presumably they would have so stated. If they so intended, they failed to express that intention, and this Board cannot add the requirement for them.

The Carrier rejoins that by Claimant's resignation on February 2, 1953, he relinquished all his rights under the collective bargaining agreement, including his seniority, and that the Employes are claiming super-seniority for an employe who resigned and was reemployed. It is of course true that by an employe's resignation he relinquishes all rights under the agreement (which incidentally did not then include Rule 177½); but it was also true that upon his reemployment he again became entitled to whatever rights the agreement gave him, including the qualification provisions of Rule 177½. It is not a question of super-seniority, or even of ordinary seniority; it is merely a question of qualification for the position of a carman, which is 1040 work days' experience as carman-tentative. Upon his resignation he lost his seniority but not his 954 days experience as carman-tentative. Upon his reemployment he did not regain his lost seniority, but he still retained his long experience as carman-tentative. 86 more work days increased to 1040 the number necessary to qualify him as a carman under Rule 177½, which merely states the experience required for that rating.

The Carrier next contends that Claimant forfeited any possible right to promotion by failing to elect within the time limit specified by Rule 177½. But as noted above, the time limit is thirty days after the date of the notice, which was never given; therefore the thirty days period never began to run, and the forfeiture clause never became effective. The fact that the Claimant did not elect to claim the promotion until June 14, 1962, rather than on May 25, the 1041st day, does not constitute a forfeiture under the rule.

The Carrier further contends that this is the first claim in which the employes have contended that service periods before and after resignation should be cumulated for computation of the 1040 days' service; that this constitutes a reversal of position by the Employes, and therefore should be denied. The employes deny the allegation, and there is no evidence in the record through which to resolve that question of fact; and although the Carrier alleges that while Rule 177½ has been in effect employes have resigned and have later been reemployed, it does not allege that any of them were carmen-tentative and had in that position gained a cumulative total of 1040 days' experience as such before and after resignation, but failed to claim that they should be cumulated. Furthermore, the question presented here is Claimant's right to promotion to carman after carman-tentative experience of 1040 work days which did not constitute one period of uninterrupted service. The fact, if true, that in other cases Rule 177½ has been applied as if it required continuous and uninterrupted service, cannot affect the Claimant's rights under the Rule which does not include that requirement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1965.