



Award No. 4740

Docket No. 4585

2-BA&P-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. 76, RAILWAY EMPLOYEES'

DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier on August 21, 1962 improperly furloughed Carman, John R. Bordner, an employee of the Butte, Anaconda and Pacific Railway Company, at Anaconda, Montana Car Department, in a manner contrary to the terms of the Memorandum of Agreement.

2. That accordingly, the Carrier be ordered to compensate Carman J. R. Bordner in the amount of eight hours at Carman's rate of pay from 3:00 P.M. August 21, 1962 and continue for the period as long as Mr. Aune was paid a Carman's rate of pay or to September 24, 1962, inclusive.

EMPLOYEES STATEMENT OF FACTS: Carman John R. Bordner, herein referred to as claimant held a regular assignment with the Butte, Anaconda and Pacific Railway Company, hereinafter referred to as the carrier at Anaconda, Montana. The claimant holds seniority at the Butte, Anaconda and Pacific Railway Company, car department seniority roster as of October 15, 1957 and is listed on the 1962 seniority roster as a carman, with an assignment of Monday through Friday, with Saturday and Sunday as rest days, with a starting time of 6:00 A.M. to 11:00 A.M., lunch period 11:00 A.M. to 12:00 and 12:00 P.M. to 3:00 P.M.

The carrier was aware of the fact that Carman John R. Bordner was employed as such since October 15, 1957, except in curtailment of force reduction and upon restoration of forces, was called back and performed work as a carman. Mr. A. E. Aune has an original seniority date with the carrier such as March 2, 1956, however, when promoted to a carman, failed to qualify as such and was demoted by former car foreman. In disqualifying Mr. Aune it was agreed with management that when an opening came up, that he would be given the opportunity to qualify and so was promoted from a carman helper on June 10, 1960, which was 30 months later and when a reduction took place, carrier has decided to keep Mr. Aune on the payroll as a carman and John R. Bordner layed off.

The list of men laid off the same time as the claimant are as following:-

J. R. Bordner, Carman
A. J. Jaap, Carman
M. J. O'Rourke, Carman
E. E. Ludwig, Helper
A. Leverton, Helper

J. Elich, Helper
D. E. Snow, Helper
A. Vavas, Helper
A. J. Monaco, Helper
J. N. Miller, Helper

Carrier's Conclusions:

1) Rule 9 of the main agreement is controlling insofar as the principle of seniority is involved when effecting force reductions.

2) The "Note" under Section 1 of the 1954 Memorandum of Understanding, together with Section 5 of such memorandum, is likewise controlling in regard to seniority displacement.

3) Historically, the seniority lists published semi-annually by the carrier for all employes in the car department make no distinction as to seniority between repairmen and helpers.

4) Should your honorable board find the position taken by the carrier in this submission not supported by the main working agreement or the 1954 Memorandum of Agreement, it is our final contention that the claim is filed in the name of the wrong employe and therefore should not be allowed at this time.

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 relations between the Carrier and the Carmen are governed by an agreement with the Butte, Anaconda & Pacific Railway System Federation which also includes other crafts. They are also governed by a Memorandum of Understanding with the Brotherhood Railway Carmen of America signed on October 16, 1954.

There is only one seniority list in the Car Department; as of January 1, 1962, it contains 85 names, of which A. E. Aune's is 59th, with seniority as of March 2, 1956, and Claimant Bordner's is 74th with, seniority as of October 15, 1957. The Employees' Submission states that all men above Aune on the roster were regularly assigned Carmen except three (actually 4) there identified with two asterisks. Thus there were 54 Carmen above Aune on the seniority list, the dates of whose status as Carmen do not appear.

In addition to the seniority dates of Aune and seven of the 26 men below him on the roster, including Claimant, the dates of their promotion to Carmen are shown, Claimant's being October 15, 1957, and Aune's being June 10, 1960. Aune had previously been promoted before Claimant, but failed to qualify.

Claimant was furloughed in reduction of forces, and the Claim is that although he was below Aune on the seniority roster, his furlough was improper because his promotion to Carman was earlier.

The Memorandum is somewhat unusual. Sections 4) and I provide as follows:

"4) All promotions shall be based on ability and seniority; seniority shall prevail at all times."

"I. Concerning establishment of seniority date, the date and hour the employe begins work after formal application has been made will be considered as the date of entering service."

Section 1) provides that vacancies of more than 25 working days will be bulletined and the senior applicant will be assigned thereto, given 25 working days to prove qualification, and if found unqualified will be returned to his former position.

Section 1) is followed by this note:

"Note: **Senior employe** refusing promotion or **failing to qualify** will not be allowed to displace junior promoted employee but he **will hold his original seniority in curtailment of forces.**" (Emphasis added.)

In other words, Claimant outranks Aune on bids for Carmen's positions but not on seniority in curtailment of forces. Thus, although Aune failed to qualify by promotion before Claimant, nevertheless, under the express provisions of the Note to Section 1), in curtailment of forces he still holds his original seniority, which under Section I is the date and hour he entered the Carrier's service.

Unusual as it may be to provide that layoffs in curtailment of service shall be made according to original seniority without regard to class of service, the parties so agreed, and the Carrier had no alternative but to furlough Claimant rather than Aune.

A W A R D

Claim denied.

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.