



Award No. 4843
Docket No. 4720
2-SP(T&L)-CM-'66

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. 162, RAILWAY EMPLOYES'
DEPARTMENT, AFL-CIO (Carmen)**

**SOUTHERN PACIFIC COMPANY
(Texas and Louisiana Lines)**

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier removed Carman Helper Isiah Franklin from service on October 6, 1963, in violation of the provisions of the controlling Agreement.

2. That accordingly, the Carrier be ordered to restore Carman Helper Isiah Franklin to service with seniority and all other rights unimpaired and compensate him for all wage loss resulting from the aforesaid violation, including:

- (a) Making him whole for all vacation rights
- (b) Paying the Hospital Association dues for Hospital, Surgical and Medical Benefits
- (c) paying the premiums for Group Life Insurance.

EMPLOYEES' STATEMENT OF FACTS: Carman Helper Isiah Franklin, hereinafter referred to as the claimant, was employed by the Southern Pacific Company, Texas and Louisiana Lines, hereinafter referred to as the carrier, as carman helper in the Englewood Car Department, Houston, Texas.

On August 17, 1925, the claimant was employed as laborer in the carrier's Houston General Shops, and worked as such until he was set-up as a boiler-maker helper in the year of 1927, and worked as a boilermaker helper until the year of 1931, at which time he was cut off in a force reduction, and was recalled as a boilermaker helper April 15, 1941, and worked as such until he was cut off in force reduction November, 1961, and on November 13, 1961, he was put to work and assigned a a carman helper in the carrier's Englewood Freight Car Shop, Houston, Texas, and he worked as such until he was recalled

and any earnings received by claimant in other employment during the period involved.

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.

Claimant worked for the Carrier as a laborer from 1925 to 1927, and then as a boilermaker's helper until 1931. He was then out of its service for ten years, during which under the agreement then in effect he lost his 1927 boiler-maker helper's seniority.

Claimant re-entered the Carrier's services as a boilermaker helper on April 15, 1941, and retains seniority in that position as of that date, according to the seniority list of January 1, 1964. He was cut off as a boilermaker helper in November, 1961 in force reduction. On November 13, 1961 he was employed as a carmen helper with seniority as of that date; but on February 5th, 1962, he was recalled as a boilermaker helper pursuant to his 1941 seniority in that position, and thereupon relinquished his seniority as carmen helper. He was again cut off as a boilermaker helper in force reduction on May 6th, 1962.

Claimant re-entered the service as a carmen helper on August 13, 1963, pursuant to his request for employment, but during his sixty days' temporary status under Rule 40, he was disapproved for employment because of his confusion with car movements and yard tracks, and his violation of safety precautions.

The Carrier's action was in accordance with Rule 40, and therefore was not in violation of the agreement. Rule 34 is not applicable, both because it is a discipline rule, and because at the time in question Claimant was not a permanent employe, but merely a temporary one, under the express provisions of Rule 40.

As he had relinquished his carmen helper's seniority on February 5, 1962, the Carrier could not without violation of the Agreement have recognized him as possessing permanent status as a carmen helper.

In the Employe's Rebuttal it is contended that the Carrier's action although expressly authorized by Rule 34, constituted a violation of Rule 46, which provides that mechanics and apprentices shall be furnished sufficient competent help when needed, and that when experienced helpers are available they shall be used in preference to inexperienced men. Rule 46 clearly means that experienced helpers rather than inexperienced men shall if available be used to help mechanics and apprentices, which is not involved in this claim. If the second clause of Rule 46 could be taken out of context and applied here it could only mean that as between available experienced and inexperienced employes, experienced ones shall be used. There is no suggestion in the record

that an inexperienced man was used in lieu of claimant; and in any event Rule 46 cannot overrule or supersede Rule 34 and other provisions of the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.