

Award No. 4867

Docket No. 4804

2-ACL-SM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Donald F. McMahon when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYEES' DEPARTMENT, A. F. of L.-C. I. O. (Sheet Metal Workers)

ATLANTIC COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That under the provisions of the applicable agreement, Sheet Metal Worker Helper H. M. Carter was improperly and unjustly dismissed from the service of the Carrier on May 26, 1964.

That accordingly the Carrier be ordered to return Mr. Carter to its service and compensate him in the amount of eight (8) hours at the applicable rate for each working day beginning May 26, 1964, and thereafter until he is restored to service, with seniority and all other rights unimpaired.

EMPLOYEES' STATEMENT OF FACTS: Sheet Metal Worker Helper H. M. Carter, hereinafter referred to as the claimant, was employed on May 25, 1964, by the Atlantic Coast Line Railroad, hereinafter referred to as the carrier, as a sheet metal helper in the carrier's repair shops in Waycross, Georgia.

The claimant, prior to becoming a sheet metal worker helper, has been as an employee of the sheet metal worker's craft on May 25, 1964, he then established employment rights in conformity with the seniority provisions of Rule 12 of said current agreement and thereupon became an employee of the carrier subject to all the rights, privileges and benefits embodied in the collective current agreement rules to which all other employees of the sheet metal workers craft are subject, regardless of their length of service.

Moreover, when the carrier made the election to remove this claimant from service at the close of his work day on May 25, 1964, without the benefit of any hearing and authorized representation as provided for in Rule 21 of the said current agreement, that such action of the carrier would obviously constitute an unjust suspension from the service, and for which loss this claimant is entitled to be made whole under Rule 21, which reads as follows:

"No employee shall be disciplined without a fair hearing by a designated officer of the Company. Suspension in proper cases pend-

(3) Claimant's signature upon the Form 127 constitutes his acceptance and understanding of the status of a temporary employee.

(4) Formal rejection of claimant's Application by the Personnel Department was appropriate, timely, and reasonable.

(5) Rule 21 is inapplicable because this was not a discipline case and, therefore, no hearing or investigation was required.

(6) Rule 16 (g) is inapplicable because claimant was not an employee and there was no reduction in force under the terms of this provision.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employ or employees involved in this dispute are respectively carrier and employee 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.

Claim is made on behalf of Sheet Metal Worker Helper H. M. Carter, for improper and unjust dismissal from service of Carrier, May 26, 1964. Claimant requests he be returned to service with seniority rights and all other rights unimpaired, and compensation for each working day, for 8 hours, until he is restored to service. The Organization relies upon the provisions of Rules 16(g) and 21 to support its contentions.

Carrier relies on the provisions of Rule No. 16 of the Agreement to support its position here.

The facts and record before us show that Claimant was formerly in the employ of Carrier for several years as a Fireman. That as a result of Award by Arbitration Board No. 282, claimant having a rate classification of C 6, described as less than ten years, but more than 2 years' service in Fireman position, claimant, was advised of his rights to accept other work offered by Carrier, and upon his refusal, he elected to accept a severance payment from Carrier. By such action and accepting the severance pay, he no longer had any employee status with Carrier, and in addition gave up all his seniority rights on Carrier's property. On May 25, 1964, claimant made written application for employment as a Sheet Metal Worker Helper, and was put to work the same day and performed service for about 3 hours.

It is noted at this point, that claimant was put to work by the General Foreman who failed to follow Carrier's requirements that an approval of application for employment must be approved by the Personnel Department. Claimant fully understood this requirement, when he signed the application dated May 25, 1964. A reference is made to Par. 7, last page of the application which reads as follows:

7. "I further understood and agree, that my employment is temporary until the application is approved, as to references given and

my application has been approved by the Chief Medical Officer, and this application may be rejected by the Company for any cause which it may deem proper."

From the record here Rules 16(g) and 21 have no application to the situation here, for the reason that claimant held no employe status with Carrier, when he made application for the Helper position, and it need not be accepted until properly approved.

Rule No. 29, relied upon the Carrier, relates specifically to Employment, and wholly applicable here.

Carrier has in no way violated the provisions of the Agreement as alleged here, and the claim is without merit.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of May 1966,