



Award Number 5882

Docket Number 5673

2-L&N-CM-'70

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee William H. Coburn when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That failure to recall Carman B. J. Gentry to service at Corbin, Ky., effective January 3, 1967, in line with his seniority thereat, was a violation of the current Agreement, and
2. Accordingly, the Louisville and Nashville Railroad should be ordered to—
 - (a) Restore him to service with seniority, vacation and all other employe rights unimpaired,
 - (b) Compensate him for all time lost subsequent to January 1, 1967, and
 - (c) Pay all premiums for his hospital, surgical, medical and group life insurance benefots for the entire time he is withheld from

EMPLOYEES' STATEMENT OF FACTS: Carman B. J. Gentry, the Claimant, was employed by the Louisville and Nashville Railroad, hereinafter referred to as the Carrier, as a regular Carman Apprentice at S/L Shops, Louisville, Ky., on August 26, 1952. He completed his apprenticeship on February 21, 1958 but was not retained in Carrier's service at Louisville since there were no vacancies for Carmen at that point.

Upon completion of his apprenticeship, the Claimant immediately applied for work at some other point on the Railroad. As a result, he was re-employed by the Carrier to fill a carman's vacancy at Chattanooga, Tenn., where he first worked on May 8, 1958 and continued to work until he was furloughed effective November 14, 1958, due to a "decrease in business". A short time later, he learned that there were upgraded carmen helpers working at Corbin, Ky., his home town, and applied for a transfer thereto. The transfer was arranged between the Chief Mechanical Officer and the General Chairman in accordance with the provisions of Rule 27 of the Agreement, and the Claimant worked his first day at Corbin on March 6, 1959. However, due to "decreased coal loading", he was furloughed effective March 23, 1959. He was then transferred to West Knoxville, Tenn., effective April 1, 1959, but was again furloughed a few months later. As a result, he transferred to De-Coursey, Ky., under the provisions of Rule 27 of the Agreement and worked his first day thereat on December 7, 1959.

All matters referred to herein have been presented, in substance, by carrier to representatives of the employee, either in conference or correspondence.

(Exhibits not reproduced. Page references relate to original documents.)

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 respectfully 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 events leading to the filing of the claim before the Board are fully described in Award 5743 and need not, therefore, be repeated here. It suffices to point out that in the handling of this dispute on the property, the Employees first filed and later abandoned a claim on behalf of Claimant Gentry based upon the theory of the case advanced in Award 5743.

The premise upon which this claim is based is that Claimant retained his seniority rights as a Carman at Corbin, Kentucky, when he resigned from the Carrier's service as a Car Inspector at DeCoursey, Kentucky, on December 22, 1966.

The resignation letter reads, in pertinent part, as follows:

"Please accept this as my resignation and final separation from the L&N R. R. as Car Inspector at Decoursey, Ky. My L&N identification No. is 392881."

The Employees assert that the foregoing means that Claimant did not intend to give up his seniority standing and his right to work as a Carman at Corbin, Kentucky, but only his Car Inspector job at DeCoursey.

The burden of proving such intent rests on the petitioning Employees. This record in its entirety discloses no evidence of probative value establishing that Claimant intended only to resign from a particular job at a certain location. Under all the circumstances of record the opposite conclusion must be drawn: that the Claimant knew his resignation meant a complete severance of the employer-employee relationship. Therefore, the Employees having failed to make out a *prima facie* case, the claim must fail.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 9th day of April 1970.