Award No. 6248
Docket No. 6092
2-SCL-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John J. McGovern when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 42, RAILWAY EMPLOYES' DEPARTMENT, AFL-CIO (Carmen)

SEABOARD COAST LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That under terms of the agreement Orville L. Carter, who is a qualified Carman Painter, was unjustly denied employment by the Seaboard Coast Line Railroad Company.

2. That the Seaboard Coast Line Railroad Company be required to employ Mr. Orville L. Carter with seniority as of date he applied for Carman Painter position.

3. That the Seaboard Coast Line Railroad Company be ordered to compensate Mr. Orville L. Carter eight (8) hours each work day, forty hours per week, from May 3, 1969 to date he is actively employed as a Carman Painter by the Carrier.

STATEMENT OF FACTS: Mr. Orville L. Carter, hereinafter referred to as claimant, was employed by the former Atlantic Coast Line Railroad Company, which is now a part of the Seaboard Coast Line Railroad Company, the latter will hereinafter be referred to as the carrier, on May 21, 1953 as a painter apprentice. He completed his apprenticeship on December 1, 1959. There were no vacancies for painters on the carrier's property at the time and claimant was not employed as a painter, however, the claimant applied for and was granted employment as a locomotive fireman with the carrier on December 22, 1959. He worked this position until May 1963 at which time he was disqualified as a fireman because of his physical condition. After his disqualification as a fireman for physical reasons, he continued to hold seniority rights as a fireman until September 9, 1968 when Mr. F. W. Jerkins, Master Mechanic for the carrier, advised the claimant his name had been removed from the firemen's seniority roster.

In 1966 while holding seniority rights as a fireman but physically disqualified from working position, the claimant made application with carrier's mechanical department for a position as painter in the Waycross, Georgia shop.

no openings for painters and no painter apprentices or painter helpers promoted. Therefore, even if Carter had acquired seniority, he would not have been eligible for a position because there was no vacancy for a painter. His claim is an impossibility.

The Carrier respectfully urges denial of the claim submitted by the organization for the following reasons:

(a) Carter must be equated with a new job applicant because he is an ex-employe and holds no seniority anywhere on the carrier.

(b) Service as a fireman did not entitle Carter to be hired to render service as a painter.

(c) The carrier is not required to hire anyone merely because of the preference of the union.

(d) The Railway Labor Act does not provide for the arbitration of grievances for prospective employes and, therefore, there is no jurisdiction in this Board to hear the dispute.

(e) Even if the Board had jurisdiction, the time limit stipulated in the collective bargaining agreement for the filing of a grievance had long since expired when the claim was first made.

(f) The claim must be characterized as imaginary because had the claimant presented his claim in timely fashion, no violation of the agreement could have been found because there was no need for a painter.

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.

Although the Claimant in this case had past employment relationships with the Carrier, a review of the evidence shows conclusively that at the time this claim arose, claimant was not an employe of the Carrier. Hence none of the rules of the agreement are applicable to him. Since he lacked employe status, this Board has no jurisdiction of the dispute under Section 3, First (i) of the Railway Labor Act. We will dismiss the claim.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of March 1972.

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