Award No. 6301
Docket No. 6176
2-SOU-CM-'72

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Joseph E. Cole when award was rendered.

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 21, RAILWAY EMPLOYES' DEPARTMENT, A. F. of L. - C. I. O. (Carmen)

SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES:

1. That the Carrier violated the controlling Agreement of March 1, 1926 and Memorandum of Understanding signed August 11, 1953, effective September 1, 1953, when the names of A. A. Goodner, W. E. Brackett, J. P. Cooks, H. E. Ledford, S. A. Williams, D. J. Mynatt, W. H. Bright, G. A. Collins, J. D. Dickey, J. W. Brown, J. A. Bryant, H. B. Jordan and D. J. Jones were placed on the Carmen's Seniority Roster at Chattanooga, Tennessee, before having served an apprenticeship of four (4) years or have had four (4) years' experience plying the Carman's trade.

2. That the Carrier be ordered to remove the names of said employes listed in Item 1 from the Carrier's Seniority Roster at Chattanooga, Tennessee, until such time as they have had four (4) years' experience plying the Carmen's trade.

EMPLOYES' STATEMENT OF FACTS: A. A. Goodner, W. E. Brackett, J. P. Cooks, H. E. Ledford, S. A. Williams, D. J. Mynatt, W. H. Bright, G. A. Collins, J. D. Dickey, J. W. Brown, J. A. Bryant, H. B. Jordan and D. J. Jones, Chattanooga, Tennessee, were hired by the Southern Railway Company (The Cincinnati, New Orleans and Texas Pacific Railway Company) hereinafter referred to as the Carrier and sent to Carrier's special training school in Atlanta, Georgia for approximately eight (8) to thirteen (13) weeks of training. On June 27, 1966, A. A. Goodner, E. W. Brackett, J. P. Cooks, H. E. Ledford, S. A. Williams, D. J. Mynatt, W. H. Bright, G. A. Collins, J. D. Dickey, J. W. Brown and J. A. Bryant went to work in Carrier's Shop, Chattanooga, Tennessee, and their names were placed on the Carmen's Seniority Roster. On October 5, 1966, H. B. Jordan went to work in Carrier's Shop, Chattanooga, Tennessee and his name was placed on the Carmen's Seniority Roster and on October 15, 1966, D. J. Jones went to work in Carrier's Shop, Chattanooga, Tennessee, and his name was placed on the Carmen's Seniority Roster.

consisting of letters addressed to the Brotherhood's General Chairman by carrier's former Director of Labor Relations on July 26, 1967, August 16, 1967, September 15, 1967, and November 28, 1967, respectively, wherein carrier's with respect to the claim presented and its interpretation of the rules cited and relied upon by the Brotherhood is set forth in detail. Carrier does, however, reserve the right to appear at oral Hearing before the Board and present rebuttal argument with respect to any argument the Brotherhood may advance in connection with the dispute on the merits and its interpretation of the rules of the agreement which have been amended and, in some cases, abrogated in their entirety by the May 6, 1971, agreement.

On the record, the effective agreement has not been violated as alleged by Brotherhood and there is clearly no basis for the claim presented. If it is not dismissed, the Board should deny the claim presented by the Brotherhood.

Carrier has shown conclusively in the record before the Board that:

1. The claim presented to the Board was resolved by an agreement dated May 6, 1971. The question at issue is moot. There is simply nothing left for the Board to decide. The Board should in these circumstances dismiss the claim presented.

2. Should the Board decline to render a dismissal award, it should deny the claim presented as the agreement has not been vioalted as alleged.

On the record, the Brotherhood cannot prove the validity of the claim presented. The Board should render a dismissal award and carrier respectfully requests that it do so.

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 were given due notice of hearing thereon.

The organization alleges that carrier violated the controlling agreement when it unilaterally discontinued the hiring of apprentices in the Carmen's craft under the long standing four-year apprenticeship program, then in effect between the parties, and in 1963 established in lieu thereof its own training program. Because of the shortage of qualified journeyman mechanics in the various shop craft classifications, the carrier established through Southern Technical Institute, a branch of Georgia Institute of Technology, Atlanta, Georgia, an intensive and concentrated training program for prospective carmen and other mechanics in the several shop craft classifications. The claim in this dispute arises because, on completion of their special training period off the carrier's property, carmen student mechanics were employed by carrier, and their names were placed on the Carmen's seniority roster as of the date employed, before having served four years of training or having completed four years of experience in the Carmen's trade, as provided in the

effective agreement. Between 1964 and May 6, 1971 the carrier hired and placed on Carmen's seniority rosters more than 700 employes who had completed the Carmen's student mechanic training program.

The evidence of record shows that, as a result of notice jointly served on carrier in October 1968 by the General Chairman of Carmen and other shop craft organizations, the parties after extended negotiations entered into an agreement on May 6, 1971 which abrogated the rules contained in the basic agreement providing for the former apprenticeship program and established in lieu thereof a new student mechanic training program.

Section V of the May 6, 1971 agreement provides that student mechanics hired on and after May 6, 1971 will, upon completing four years of training, establish seniority as carmen retroactive to the date they successfully completed the first 366 work days of the approved training program. The Board finds, as it did in Awards 5421 and 5410 with respect to similar claims presented by Electrical Workers, that carrier violated the applicable agreement provisions in according employes who were afforded special training prior to May 6, 1971 carmen's seniority before they actually completed four years of training and experience in the carmen's trade; therefore, we will sustain Part 1 of the claim.

The evidence also discloses that many of the 700 or more employes hired between 1964 and 1971 have already completed four years of carmen's experience, and that during this period promoted mechanics were placed on the carmen's seniority rosters ahead of student mechanics employed.

The parties expressed their intent and obligation to continue to protect the rights of journeymen mechanics by providing in Section V — Seniority, of the May 6, 1971 agreement— "however, a student mechanic shall not by reason of this retroactive feature, establish a seniority date ahead of any journeyman mechanic in carrier's service on the effective date of this agreement who may transfer to or otherwise be employed at the location involved." The Board finds that the seniority date of any such journeyman mechanic adversely affected by employment of a student mechanic either prior to or after the May 6, 1971 agreement was negotiated should be adjusted accordingly.

It is significant that the 366-day retroactive feature of the May 6, 1971 agreement is applicable only to student mechanics who enter the new training program on and after May 6, 1971. Had the parties intended to change the seniority dates as carmen given promoted mechanics and men entering the special training program as student mechanics prior to negotiation of the May 6, 1971 agreement, they would have so provided in said agreement. Since the parties, by the express terms of the May 6, 1971 agreement, were careful to preserve the seniority rights and relative standing of all employes in the order of their completion of four years of training or experience, no useful purpose would now be served to order any change or adjustment in seniority dates of such employes. Part 2 of the claim will therefore be denied.

AWARD

Claim disposed of in accordance with Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: E. A. Killeen
Executive Secretary

Dated at Chicago, Illinois, this 2nd day of June 1972.

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