Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD SECOND DIVISION

Award No. 6770
Docket No. 6582
2-MKT-CM-'74

The Second Division consisted of the regular members and in addition Referee David Dolnick when award was rendered.

Parties to Dispute: (System Federation No. 8, Railway Employes' Department, A. F. of L. - C. I. O. (Carmen)
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employes:

1. That under the current Agreement Carman Welder B. R. Jennings was unjustly dealt with when he was not recalled to service of the Missouri-Kansas-Texas Railroad Company at Denison, Texas, beginning with the date of November 2, 1972.

2. That accordingly, the Missouri-Kansas-Texas Railroad Company at Denison, Texas, be ordered to compensate Carman Welder B. R. Jennings for all time lost, vacation rights, made whole for all pension benefits including Railroad Retirement and Unemployment Insurance, made whole for all health and welfare insurance, made whole for any other benefits that he would have earned during the time he is held out of service beginning with the date of November 2, 1972 until returned to service.

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 was employed on December 1, 1969 as a "Non-journeyman Carman" a special classification permitted to be so designated when there are insufficient upgraded regular or helper apprentices and upgraded helpers to meet the requirements of qualified experienced Carmen. Employes so hired had some experience with some of the tools of the trade, but were not qualified to perform all of the tasks of a journeyman Carman.

This Claimant worked continuously as a Carman Welder in the special classification until April 26, 1972 when he was furloughed because of a necessary force reduction. He had then worked two years and four months. The work force was increased on November 13, 1972. Claimant was not recalled. New employes were hired as "non-journeymen Carmen" to perform Carmen Welder work. It is the position of the Employes that the Claimant should have been recalled because he had established seniority under the Agreement rules.

There is no question that the Claimant had worked more than 60 days of the date of hire. Rule 29 deals with such 60 day probationary period. Rule 23 states that seniority in each craft will date from the time pay starts when employed. Rule 21 deals with furloughs and recalls. Since the Claimant acquired seniority as of December 1, 1969, under Rules 29 and 23, argue the Employes, he was entitled to be recalled on November 13, 1972 under Rule 21(b) "when four (4) carmen, apprentices and helpers were not available." Had these been the only applicable rules, the claim would have been meritorious and a sustaining award would have been issued.

But the parties entered into an Implementing Agreement on June 25, 1954 regulating the conditions of employment of regular and helper apprentices and upgraded helpers in their relations to and in their promotions to journeymen Carmen. Section 3 of that Implementing Agreement reads as follows:

> "In the event that number of regular and helper apprentices referred to in Section 1, and helpers referred to in Section 2 are not sufficient to meet service requirements, and qualified carmen with four (4) years experience are not available for employment, men experienced in the use of tools may be employed to perform carmen's work, and if retained in service on completion of 1,040 days on carmen's work, will establish seniority as carman on the first day they work as such following completion of 1,040 day's on carmen's work. Employes promoted or hired under terms of this agreement who have not established carmen's seniority as provided for herein will not be retained in service as carmen when regular four year carmen become available."

This is a special agreement covering a new classification of employes and as such takes precedence over the general seniority rules in the schedule agreement. The basic question before this Board is whether employes hired under Section 3 of the Implementing Agreement dated June 25, 1954, acquire seniority rights under Rules 29, 23, 21 and others in their special classification, by whatever name it may be identified.

First, Rule 23 provides that "seniority in each craft shall be confined to the point employed in each" classification therein listed. No classification of "non-journeyman Carman" or other comparable title for employes hired under Section of the Implementing Agreement is listed under the Carman craft. Employes so hired have no craft seniority under that rule.

Second, prior to October 1967 employes classified by the Carrier as "Non-journeymen Carmen" were furloughed at will without regard to their seniority in their special category. On July 17, 1967, the Carrier advised the Local Chairman that under Section 3 of the Implementing Agreement such employes, who had not worked more than 1,040 days as mechanics were not entitled to be furloughed in order of seniority. After some correspondence and discussions, the Carrier on October 30, 1967 wrote to the General Chairman, in part, as follows:

> "Our Mechanical Department office is arranging to maintain a list for non-journeymen mechanics entering service as Carmen, showing the dates of their entrance to service. When it is necessary to reduce force, the last employe hired will be the first to be taken off."

Carrier agreed to apply the principle of seniority for such special employes when a furlough became necessary. It was a limited amendment to Section 3 of the Implementing Agreement. The Carrier did not agree to apply a comparable seniority principle for recall purposes.

Third, and most important, is the fact that employes hired under said Section 3 acquire no seniority whatsoever (except for furloughs as agreed to on October 30, 1967) until they have worked more than 1,040 days as mechanics. The language in Section 3 is clear and meaningful. Employes so hired acquire seniority only "<u>if retained in service on</u> completion of 1,040 days on carmen's work" (Emphasis added). The parties agree that such an employe may be terminated on the 1,039th day of service or even on the 1,040th day of service. And no seniority rules in the schedule agreement are violated. He is permanently separated as an employe of the Carrier with no seniority or other contractual rights preserved under the Agreement.

If such an employe may be terminated at any time prior to his 1,041st day of service as a mechanic, it follows that he can be terminated while on furlough. There is no difference under Section 3 whether he is thus terminated under a condition. In each case the employes may not complain that there was no just cause for the termination. They entered into a special employment contract, the conditions of which may be amended or deleted by agreement or in negotiations pursuant to Section 6 of the Railway Labor Act, as amended.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of October, 1974.