

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

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That the Norfolk and Western Railway Company violated the controlling agreement, particularly Rule No. 28 at Williamson, West Virginia, when forces were increased by the hiring of new employees (Apprentice Car Repairers) at Portsmouth, Ohio, without first giving preference to furloughed Apprentice Car Repairers at the nearest point or points, thereby depriving furloughed Apprentice Car Repairers J. R. O'Brien, Jr., R. V. England, E. E. Johnson, J. E. Davis, J. M. Dingus and J. R. Davis of employment at Portsmouth, Ohio, effective July 24, 1972.
2. That accordingly, the Carrier be ordered to compensate the below named employees, for all time lost from July 24, 1972, until they were called to Portsmouth, Ohio, at the applicable straight time rate of pay because of such loss and Rule violations.

Apprentice Car Repairers:

J. R. O'Brien ten (10) days, July 24, 25, 26, 27, 28, 31 and August 1, 2, 3 and 4, 1972.

R. V. England, thirty-three (33) days, July 24, 25, 26, 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1, 4, 5, 6, 1972.

E. E. Johnson, thirty-three (33) days, July 24, 25, 26, 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1, 4, 5, 6, 1972.

J. E. Davis, thirty-three (33) days, July 24, 25, 26, 27, 28, 31, and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1, 4, 5, 6, 1972.

J. M. Dingus, thirty-three (33) days, July 24, 25, 26, 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1, 4, 5, 6, 1972.

J. R. Davis, thirty-three (33) days, July 24, 25, 26, 27, 28, 31 and August 1, 2, 3, 4, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 21, 22, 23, 24, 25, 28, 29, 30, 31 and September 1, 4, 5, 6, 1972.

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.

Claimants were employed as Apprentice Car Repairmen by the Carrier at Williamson, West Virginia: five of the Claimants were furloughed on March 10, 1972, one was furloughed on June 29, 1970. Carrier hired 21 new Apprentice Car Repairmen at Portsmouth, Ohio on July 2, 1972. The Claimants were not given preference to transfer there as they claimed was their right under Rule 28 of the Agreement. The Carrier's position is that Rule 28 of the Agreement does not apply to Apprentices.

Rule 28 provides as follows:

Rule No. 28 - Transfers

"When men are needed at a point and there are no furloughed men available at that point, furloughed men at the nearest point or points will be given preference in transferring to the point at which men are needed, seniority to govern, and such transferred men will have the privilege of returning to home point when force is increased. Transfers of this character are to be made without expense to the company." (Emphasis added.)

We are called upon to decide if the emphasized clause above has the effect of excluding Apprentices from having transfer rights under this rule.

On its face Rule 28 is clear and unambiguous. There is no exclusion or exception pertaining to Apprentices in the language of the rule itself. It refers to "furloughed men" for the purpose of giving them a preference in transferring to a point at which men are needed. The Apprentices are covered by the Agreement of the parties, and thus unless excluded by either the language of the rule itself, or from a reading of the Agreement in its entirety, then Apprentices are entitled, as "furloughed men" to transfer preference.

In Award No. 5838 the general rule on which the claimant apprentices relied, seeking to get paid the welders rate, was Rule 33. Rule 33 refers to welders selected from "mechanics" of the various crafts. The Board in that case correctly found that Rule 33 was a general rule pertaining exclusively to "mechanics" and such a general rule did not vest any contractual rights in apprentices who are a class aside. There is no such reference to "mechanics" in Rule 28 as quoted above; and thus we find the parties intended no such limitation to Rule 28.

The carrier contends (Carrier's Exhibit E) that the General Chairman recently took the position that Rule 18 was definitely inapplicable to apprentices; and that Rule 18 and Rule 28 contain virtually the same language "employees" versus "men". Rule 18 is a general rule pertaining only to "mechanics". It does not vest rights in apprentices, as per Award 5838. It reads "Mechanics in service will be considered for promotion to foreman".... Again, Rule 28 makes no such reference to mechanics, nor can we from a reading of Rules 18 and 28 imply such a limitation.

Carrier's reference to Rule 26 is not persuasive. In Rule 26 the language used is "seniority as per Rule 30 will govern". Rule 26 itself thus applies a limitation to the word "seniority". Importantly, the parties made no such limitation in Rule 28, and we are not empowered to add such language.

We find that Apprentices are covered by the Agreement. We find the clause "seniority to govern" simply means that length of service in relationship to others in the same group or class will govern transfers relating to that group or class. Such an objective method is fair, orderly, traditional and reasonable. We find that the Carrier maintains such a seniority roster for Apprentice Car Repairers and actually calls it "SENIORITY ROSTER" (Employee Exhibit A). We find that Award No. 5838 recognized that Apprentices have relative seniority standing in their respective apprentice group. We do not find that Apprentices are entitled to the seniority rights of mechanics: but only that they

Form 1
Page 4

Award No. 6846
Docket No. 6754
2-N&W-CM-'75

are entitled to the specific transfer rights of Rule 28 for the benefit of all furloughed men.

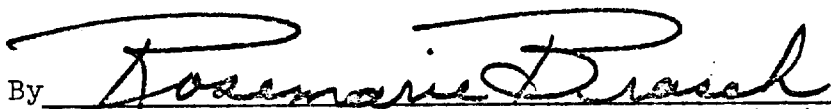
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 7th day of April, 1975.