Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 10841
SECOND DIVISION Docket No. 10274
2-SP-SMW-'86

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

Parties to Dispute: (Sheet Metal Workers' International Association
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(Southern Pacific Transportation Company

Dispute: Claim of Employes:

1) The Carrier violated the current Ogden Union Railway and Depot Agreement of January 29, 1968, referred to as the OUR&D Agreement, and the letter of understanding of the same date, between the Carrier and this Organization.

2) That Sheet Metal Workers C. Scott and B. J. Beal are covered employes under the OUR&D Agreement.

3) That claimants should have been retained in service by the Carrier as provided by the OUR&D Agreement but were wrongfully furloughed by the Carrier on August 2, 1982 (Scott) and August 5, 1982 (Beal).

4) That the Carrier compensate claimants for 8 hours each at Sheet Metal Workers straight time rate of pay for each and every work day from the first day they were furloughed until claimants returned to service, including any and all periodic increases in pay provided by current Agreement provisions, for all holidays, personal leave days, jury duty days, vacation days and all contractual benefits accruing to claimants under applicable agreements for all time claimants not retained in service by the Carrier.

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 employes 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 significant events leading to this dispute began during October, 1967, when the Interstate Commerce Commission (ICC) approved the reorganization of the Ogden Union Railway & Depot Company (OUR&D), a facility jointly owned by the Carrier and the Union Pacific (UP). Pursuant to such approval, an Implementing Agreement (The Agreement) was entered into on January 29, 1968 (effective on March 1, 1968) by and between OUR&D, the Carrier, UP, and the employees represented by System Federations No. 105 and

114, Railway Employes' Department. The Agreement provided for the transfer of all OUR&D employees in the class and craft of Carman, Boilermaker, Sheet Metal Worker, Electrician, Fireman and Oiler to either the Carrier or UP.

Claimant Scott commenced service with the Carrier at Ogden in the classification of Laborer on September 8, 1955. That classification of work is represented by the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse & Railway Shop Laborers (IB of F&O). In 1978, he transferred to an apprenticeship program for Sheet Metal Workers at Ogden and by letter dated March 2, 1979, relinquished "any and all seniority rights" he may have accumulated while working as a Laborer at Ogden, in order to transfer to a Sheet Metal Worker Apprentice position. He later acquired his seniority date as a Journeyman Sheet Metal Worker on July 1, 1979. On August 3, 1982, Claimant Scott was furloughed pursuant to Rule 29(a) and (c) of the Collective Bargaining Agreement.

Claimant Beal also commenced service with the Carrier in the classification of Laborer at a later date, October 10, 1955, and essentially progressed as Claimant Scott, acquiring a seniority date as a Journeyman Sheet Metal Worker on January 21, 1980. He was also furloughed in August for the same reason and in the same manner as Claimant Scott.

While there have been a number of procedural contentions and objections advanced by both parties, the essence of this dispute turns on the question of whether the Claimants continued to hold their protected status conveyed by The Agreement after they transferred to the Sheet Metal Craft, as argued by the Organization, or whether their action severed the covered employes protection accruing to them pursuant to The Agreement of January 29, 1968.

It is our opinion that the procedural and jurisdictional matters brought forth in the record should be set aside because of the particular and peculiar circumstances prevalent herein. Moreover, the interests of both parties are best served by a review of this matter on the merits. However, with respect to the Organization's contentions that the Carrier "made jobs" for junior employes who had been employed and progressed under similar conditions, the Board finds no evidence that these employees were retained by reason of any Agreement entitlements.

Turning to the substance of this dispute, standing alone, there is much to recommend the Organization's core contention that the protected status is retained by the individuals because Section 3 of The Agreement, in pertinent part, reads:

> "All employees of the OUR&D * * * shall be continued in compensated service * * * until such time as they leave the service of either Carrier by natural attrition."

This Section, however, when read within the broad framework of the setting in which The Agreement of 1968 was negotiated and its objective, past awards dealing with matters such as this, and the various and numerous protective provisions going back to the Washington, D.C. Agreement of May 1936, provides

substance to the Carrier's assertions. Certainly, it is reasonable - - as argued by the Organization -- that protection flows to the individual employee. However, this protection accrues to the employee by virtue of the respective Collective Bargaining Agreement that applies to him. However, the Implementing Agreement here was tailored to meet the needs of the Carrier and the Organization for the transfer of employees in an orderly manner and in accord and under the umbrella of the existing Collective Bargaining Agreements. The Agreement specifically provided for the transfer of employees to the respective class and craft and to the seniority rosters of either the Southern Pacific Company or the UP. On January 29, 1968, the two Claimants were employed as Laborers and held seniority at that time in that class. The Claimants were transferred in their craft in such a manner that their seniority would be based upon the seniority dates they held on the day of the transfer. Clearly, at that point, the parties recognized that the status held on the day of the transfer is what was protected. Approximately ten years later, they accepted new positions and left the seniority rosters of their class and craft under which they had obtained their protection. While we do not easily set aside the Organization's arguments in this dispute, after careful consideration of the entire record and with particular weight to Awards No. 1 of PLB 1897 and PLB 1058 as well as Award No. 19, SBA 570, all of which recognized and acknowledged the notion of protection in the class in which seniority is held, we are persuaded that the protection conveyed to the Claimants by the Implementing Agreement was severed when they relinquished their status as Laborers.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 7th day of May 1986.