

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12985
Docket No. 12821-I
96-2-93-2-198

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

PARTIES TO DISPUTE: (Ms. B. A. Hald and Ms. Barbara McCaleb
(
(The Chicago and North Western Transportation
(Company

STATEMENT OF CLAIM:

"1. Did the Carrier violate rules #57, 14 & 16 of the agreement effective April 16, 1984, when they required Carmen Barbara McCaleb and Barbara A. Hald to relinquish their qualifications and seniority as Carmen in order to work as a Coach Cleaner at the California Avenue Car Facility until such time as they worked an additional 732 days to qualify as carmen.

2. Should the Carrier reinstate them to their rightful positions as Carmen and restore their seniority to a date of July 1, 1984 to which they are entitled.

3. Should the Carrier make the Claimants whole for all wages lost account of the Carrier most arbitrary actions including the difference between the Carman's rate of pay and that of a coach cleaner, the position they were forced to hold, such as Holidays, overtime and straight time pay."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

At the time this dispute arose, the Claimants, who held seniority as coach cleaners, were working full time as "set-up" carmen, i.e., employees who may make application to fill journeymen carmen vacancies when there is a shortage of journeymen. Pursuant to agreement rules, while working as set-up carmen, the Claimants had the right to have their seniority maintained on the coach cleaner seniority roster until such time as they had worked 732 days as set-up carmen. On reaching this contractual plateau of 732 days of work as set-up carmen, the Claimants, as with all employees in a like position, became entitled to a journeyman carman's seniority date, provided they forfeit their coach cleaner seniority.

The Claimant's reached this 732-day plateau by July 1, 1984, to become eligible for a journeyman carman's seniority date, but did not exercise this seniority option. Subsequently, in January of 1985, the Claimants, as with other set-up carmen, were informed by the Carrier that because a major car rehabilitation program was coming to a close that there would not be sufficient work to continue in its employ all of the set-up carmen. The Claimants, as with other set-up carmen who had or were approaching the 732 day mark, were told that they could waive their entitlement to a journeyman carman's seniority date and retain their coach cleaner's seniority date, where there was, at the time, still work available for coach cleaners.

Both Claimants opted to waive their right to a journeyman carman's seniority date so as to retain their respective coach cleaner seniority dates, i.e., April 10, 1978, for Claimant Hald, and April 3, 1978, for Claimant McCaleb. The Claimants each signed a letter of waiver (Claimant Hald on January 11, 1985 and Claimant McCaleb on February 15, 1985), which identical letters read as follows:

"Although I have worked the 732 days necessary to qualify as a carman at the California Avenue Car Maintenance Facility, I do not wish to be placed on the Carman's Seniority Roster with a July 1, 1984 date.

I hereby relinquish the July 1, 1984 seniority date on the Carman's roster and forfeit the right to a carman date until such time as 732 days of practical carman's experience has again been achieved under Rule 57.

I shall remain on the Coach Cleaner roster at California Avenue, retaining my current seniority."

Both Claimants thereafter maintained employment as coach cleaners and each subsequently became full journeymen carmen (Claimant Hald on June 21, 1993, and Claimant McCalieb on July 19, 1993). The Board finds it worthy of note that in their Ex Parte Submission the Claimants state that 13 other employees forfeited their set-up carmen work days so as to retain their coach cleaner seniority.

Some eight and one-half years after they had each signed the aforementioned letters of waiver, the Claimants, by letter dated September 25, 1993, filed the instant claim.

The Carrier has raised a number of procedural challenges to the claim as handled and presented. The Claimants have also advanced several procedural arguments. The Board finds no reason to rule upon these various contentions of the parties since we find the claim itself to be without justification. We say this in a recognition that both Claimants readily admit that had they not elected at the time in question to retain their seniority as coach cleaners in a waiver of seniority as journeymen carmen that they would have been furloughed, as was the case with other set-up carmen who did not execute a like letter of waiver. In electing to retain seniority on the Coach Cleaner roster the Claimants were able to continue to be employed, albeit as coach cleaners, in 1985 and thereafter, or until they again began work as set-up carmen in 1992.

Certainly, having made a choice of employment opportunities in January 1985, the Claimants may not now properly claim that they be given seniority retroactive to the dates that they each voluntarily executed the above cited waiver letter in a contention that they were somehow misinformed or pressured into signing the letters of waiver.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

Form 1
Page 4

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 2nd day of February 1996.