

Award No. 9831
Docket No. DC-11788

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John Day Larkin, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES, LOCAL 848
CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees, Local 848, on the property of the Chicago, Burlington and Quincy Railroad Company, for and on behalf of former Waiter Ernest Curtis that he be restored to service and compensated for net wage loss with seniority and vacation rights unimpaired account of Carrier forfeiting claimant's seniority in violation of the existing agreement.

EMPLOYEES' STATEMENT OF FACTS: Claimant was advised by Carrier's Crew Supervisor in January, 1959, that Carrier was contemplating reducing forces before the last of February, 1959. Carrier's Crew Supervisor agreed to furlough claimant in advance, without prejudice, since a reduction in force was anticipated, on the condition that claimant leave a mailing address, report for work within ten (10) days after being notified by mail or telegram and on the further condition that claimant make a couple of trips should he be called at the address in question.

Claimant gave to Carrier's Crew Supervisor the address of 478 Clayton, c/o Garfield Burns, "Burns Janitorial Service". Carrier and claimant had followed the same procedure in 1956, the only difference being that in 1956 the address left by claimant was c/o the "Atlantic Coast Line Railroad Commissary", Jacksonville, Florida. These arrangements were made in both instances in order to afford claimant the opportunity of working for the Atlantic Coast Line and Burns Janitorial Service while furloughed. In the latter instance, and prior to February 5, 1958, claimant was called for duty three (3) times. Twice he reported and made a trip, and on the third occasion, he informed Carrier by telegram that he could not make the trip because of a tooth infection.

Under date of February 5, 1959, claimant received official notice of the fact that he had been furloughed. (Employee's Exhibit A.) On March 4, 1959, Carrier advised claimant that he would not be recalled to service. (Employees' Exhibit B.) As on the two (2) occasions prior to February 5, 1959, when claimant was called for service, both the February 5th letter and the March 4th letter were addressed to claimant at 478 Clayton, Denver, Colorado. No reason was assigned by carrier in its March 4th letter as to just why claimant would not be recalled to service.

Carrier recalled to service an employe junior to claimant who had been furloughed either at the same time claimant was furloughed or prior thereto.

All data herein and herewith submitted have been previously submitted to the Employees.

(EXHIBITS NOT REPRODUCED).

OPINION OF BOARD: Claimant Ernest Curtis was employed by this Carrier as a dining car waiter and began his service July 4, 1957. In January 1959 Claimant and others were advised of a plan to reduce force before the end of February. Claimant was furloughed along with some others, February 5, 1959. One month later, March 4, 1959 the following communication was addressed to Claimant:

"Mr. E. Curtis
478 Clayton
Denver, Colorado

Dear Sir:

On February 5th, 1959, you were advised that you were being laid off due to reduction in force.

This letter is to advise that you will not be recalled to service with this company.

Please return all company property you have in your possession, including the following:

Rule Book #370
Recipe Book #1542
Payroll Card.

Very truly yours,

/S/ P. M. Scott
P. M. Scott

cc: H. G. Mott"

On May 27, 1959 the Business Agent for Claimant's local 848, addressed the following letter to Mr. Mott:

"Mr. H. G. Mott
Supervisor Crew Personnel
Chicago, Burlington & Quincy Railroad
1447 So. Canal Street
Chicago 7, Illinois

Dear Sir:

Accept this as a time claim in behalf of Mr. Ernest Curtis who has been denied the right to exercise his seniority as a waiter in the Dining Car Department of the Chicago, Burlington and Quincy Railroad Company.

Mr. Curtis was furloughed February 5, 1959, and has not as yet been recalled to service while junior employees — to name one in particular, Charles Boyer, a waiter with less seniority than Mr. Curtis — are being assigned to various positions as waiter.

We request that Mr. Curtis be paid in accordance with all the time earned on the extra board by the junior employee who has been put over him in violation of his seniority rights.

We also request that Mr. Curtis be immediately called and assigned to the extra board until such time that he can hold regular assignment and given his proper turn on the extra board.

Very truly yours,

Cecil L. Patrick
Business Agent, Local 848"

The following reply was received from the Supervisor of Crew Personnel:

"Mr. Cecil L. Patrick
Business Agent
Joint Council Dining Car Employes
743 East 75th Street
Chicago, Illinois

Dear Sir:

This will acknowledge your letter of May 27 making claim in behalf of Mr. Ernest Curtis.

If you will investigate further, I am sure you will find that we did comply with the contract rules, however Mr. Curtis failed to comply.

Your claim and request is respectfully denied.

Very truly yours,

/S/ H. G. Mott
Supervisor Crew Personnel"

Mr. Patrick replied as follows:

"Mr. P. M. Scott
Superintendent Dining Car Dept.
Chicago, Burlington & Quincy RR Co.
1447 So. Canal Street
Chicago 7, Illinois

Dear Sir:

On May 27, 1959, a claim was filed in behalf of Ernest Curtis who has been denied his right to exercise his seniority in the Dining Car Department of the Chicago, Burlington and Quincy Railroad Company.

In denying this claim in a letter dated June 8, 1959, Mr. Mott refused to recognize the fact that seniority is personal property and that he cannot use fictitious excuses for denying an employee or individual his rights to his own personal property.

In his letter of June 8, 1959, he states that if we will investigate further, he is sure that we will find that he complied with the agree-

ment and that Mr. Curtis did not. Mr. Curtis was drawing unemployment compensation and because he has received a notice dated February 5, 1959, that he was being layed off as a waiter and on March 4, 1959, he was told in another letter that he would not be recalled to service with the company. No reason was given and this letter was addressed to 478 Clayton Street, Denver, Colorado and Mr. Curtis lives at 3640 York Street, Denver, Colorado and Mr. Curtis had so notified the Carrier and stated his willingness to return to work as soon as possible. As a matter of fact, Mr. Curtis would have been glad to come back to work and the Board would have discontinued his unemployment compensation for a period had he not volunteered to come back to work on his own. Mr. Mott has not presented any facts to substantiate his position in this case and when seniority is involved, I don't feel that anyone has a right to deliberately deprive an employe of his seniority just by making open statements without proof.

I am appealing to your office under the rule set forth in the existing agreement for such appeals and asking that an adjustment be made and that Mr. Ernest Curtis be immediately returned to service and paid for all time lost because of the violation of his seniority.

Very truly yours,

Cecil L. Patrick
Business Agent, Local 848"

Not until June 17, 1959 did Carrier state what Rule had been violated by Claimant Curtis. It was then, after Mr. Patrick's letter of June 10, 1959 that Mr. Scott asserted for the first time, in a letter to Mr. Patrick that Claimant had failed to comply with Rule 19 in not supplying Carrier with his latest address as required.

"(c) Employes desiring to return to service under the provisions of paragraph (b) hereof, must file their addresses in writing with the Superintendent of Dining Car Service at the time of force reduction and advise promptly of any change of address. Failure to file address as provided above, or failure to report for work within ten (10) days after being notified by mail or telegram sent to last address given will constitute forfeiture of all seniority rights. Acknowledgment of notice of recall to service will be made as promptly as possible and in any event within five (5) days after such notice has been mailed by employing officer."

This same communication from Mr. Scott (June 17, 1959) asserted that Claimant had failed to comply with Rule 25, in his failure to file a timely appeal. He had not made his complaint to the crew supervisor within ten days after his dismissal notice of March 4th.

"Rule 25. (a) An employe subject to this agreement, who believes he has been unjustly dealt with or that any of the provisions of this agreement have been violated, shall first present the same in writing to the crew supervisor within ten (10) days of the occurrence. If the claim or grievance is not satisfactorily adjusted, the employe or his representative may, following the decision of the crew supervisor, appeal in writing to the Superintendent of the Dining Car Department, providing such appeal is presented within ten (10) days.

If further handling is desired, it may be appealed by the employee's representative to the next succeeding higher officer to whom appeals are to be made. Such appeals must be made in writing within ten (10) days after decision is rendered by each officer to whom appealed."

The record leaves us with no satisfactory explanation as to why the Carrier, one month after furloughing the Claimant, sent him a notice of the termination of his service and seniority, without stating any reason for so doing. If Carrier was then aware of Claimant Curtis' moves without notification of change of address, it seems strange to us that it did not then state that Curtis' services were being terminated because of his violation of Rule 19 (c). To terminate the seniority and service of an employee while he is on furlough, and then wait three months to give him and his Organization a stated reason, seems to us not only highly irregular, but also not in keeping with the spirit and purpose of the Railway Labor Act and the parties' Agreement.

However, if the Carrier has failed to observe the spirit of the Agreement, Claimant has also failed to meet his obligations under the accepted rules. Regardless of whether Carrier was properly informed of Claimant's address, and changes of address, as required by Rule 19 (c), Curtis failed to take proper steps to protect his seniority when he was notified that it was being terminated. Rule 25 (a) has not been observed. Timely steps were not taken in this matter. And we are bound to respect the language of Rule 25 (a), as well as other provisions of the parties' Agreement.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employee involved in this dispute are respectively Carrier and Employee within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That Claimant failed to comply with the requirements of Rule 25 (a).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 15th day of February 1961.