

Award No. 15378
Docket No. MW-14896

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

GULF, MOBILE AND OHIO RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The Carrier violated the Agreement when it refused to permit Section Laborer Leroy Copeland to displace a junior employe on Section 140 (Humboldt, Tennessee) effective with the beginning of work on Monday, June 3, 1963. (Carrier's file E-41-105.)

(2) Section Laborer Leroy Copeland be allowed pay at his straight-time rate (\$2.1648 per hour) for fifteen (15) days (total \$259.80) as reimbursement for the monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: Prior to the close of work on Friday, May 31, 1963, the claimant was employed as a regularly assigned section laborer in the gang assigned to Section 140, Corinth, Mississippi. On that date, he was furloughed because of a force reduction.

The claimant had established seniority in the section laborer's class on Seniority District No. 3 as of September 4, 1941. He made a timely and proper request to displace Section Laborer Willie E. Robinson from his regular assigned position in the gang assigned to Section 132, Humboldt, Tennessee. Section Laborer Robinson held seniority in that class on Seniority District No. 3 as of September 5, 1941.

When the claimant reported for work on Monday, June 3, 1963, he was advised that Section Laborer Willie E. Robinson had commenced his vacation on that date and that he could not be displaced until the expiration of his vacation.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated April 28, 1950, together with supplements, amendments, and interpretations thereto is by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Section Laborer Leroy Copeland was furloughed at the close of work May 31, 1963, from Section 132 at Corinth, Mississippi. He notified the foreman on Section 140 at Humboldt, Tennessee, that he would displace any employe junior in seniority on that Section on Monday,

June 3, 1963. The only former employe on Section 140 at Humboldt junior in seniority to Leroy Copeland was Willie E. Robinson, who had been notified in accord with the Agreement on May 24th, that he would be furloughed at the close of work on Friday, May 31, 1963, therefore, there was no junior section laborer on section laborer's position at Humboldt on June 3. There were no displacement rights to exercise.

On June 11, 1963, Section Foreman W. W. Brown on Section No. 137, (Jackson, Tennessee) received notice from Leroy Copeland that he would displace any section laborer junior in seniority on that section on June 17, 1963, however, he did not report for duty although there was a section laborer junior in seniority working on Section No. 137 who he could have displaced.

OPINION OF BOARD: LeRoy Copeland who was employed as a regularly assigned section laborer was furloughed from Section 132 at Corinth, Mississippi because of force reduction. Since he had established seniority in Seniority District No. 3, he made request to displace a junior employe, Willie E. Robinson, on Section 140, Humboldt, Tennessee. When he reported for work on June 3, 1963, he was told that Section Laborer Robinson had begun his vacation on that date and that he could not be displaced until the expiration of his vacation. Mr. Robinson was notified on May 24, 1963, that his job would be abolished at the close of the work day, Friday, May 31, 1963.

Mr. Copeland contends that Carrier violated the Agreement, particularly Rules 2 (d) and 21 (c) when it refused to permit him to displace Mr. Robinson on June 3, 1963. In its denial, Carrier argues that since there was no junior employe or position because of abolishment due to force reduction, there were no displacement rights to exercise.

The record indicates that although Mr. Robinson was given a furlough notice, he was advised by the foreman to disregard it and report back to work on Monday, June 24, 1963, after his vacation terminated. This abolishment for the vacation period only was no more than a "paper abolishment." Since the junior employe was on a vacation from a permanent position, his position was subject to displacement. Mr. Copeland, as the senior employe, was therefore entitled to exercise his seniority rights to displace the junior employe. Our findings are consistent with Award No. 11235.

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 Employees involved in this dispute are respectively Carrier and Employees 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 the Agreement was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February 1967.
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