



Award Number 17846

Docket Number DC-18381

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

David Dolnick, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYEES

PENN CENTRAL COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 370 on the property of the Penn-Central Transportation Company, for and on behalf of Cooks E. M. Jackson and William Chadwick that they be paid for fourteen (14) hours per day at the penalty rate for all days Fireman Walter Blunt was assigned work as cook on Tug Boats in the Port of Norfolk, said assignments being in violation of the Agreement between the parties hereto.

EMPLOYEES' STATEMENT OF FACTS: Under date of December 20, 1968, Employees filed the following claim:

"Mr. H. Vascott
Asst Trainmaster-Boatmaster
Penn Central Company
Norfolk, Virginia

"Dear sir:

"The following claim is hereby presented to the Penn Central Company through you as the Employee's immediate supervisor in accordance with Rule 3-A-5 of the Rules Agreement, covering Cooks employed on Tug Boats in the Port of Norfolk, represented by the Dining Car Employees Union Local 370.

Subject:

1. The Carrier violated the Rules Agreement, effective October 1, 1953, except as amended, particularly Rule 1-A-1, when Walter Blunt to work extra as cook on Tug Boats in the Port of Norfolk, and refused to consider the fact that Blunt was a utility employee covered by the Merger Agreement between the Penn Central Co. and Transport Workers Union, and said Blunt holds seniority as a fireman, and is employed on a daily bases to make his guarantee of 200 hours per month under the merger agreement.
2. Whereas, it is a known fact that Walter Blunt gave to the Management a signed statement that he would relinquish his seniority as a Cook (furloughed) on the Cooks Roster if and when he passed the Coast Guard Examination as a Fireman, Blunt passed the examination in 1966 and was assigned to the Oilers and Firemans Roster covered by the TWU Agreement.

the applicable Agreement and whether Claimants are entitled to the compensation claimed.

(Exhibits Not Reproduced)

OPINION OF BOARD: Mr. Walter Blunt was first employed by the Carrier as a Cook on February 20, 1962 and he worked continuously in that classification until sometime in January 1964 when he was furloughed because of a reduction in the number of tug boats. On March 17, 1967 he was transferred to the Firemen's seniority roster. Firemen are represented by another labor organization.

Mr. Blunt was used as a Cook on December 11, 12, 13, 17, 18, 19 and 23, 1968. The basic issue is whether the Carrier could assign Mr. Blunt to the Cook position.

The following Rule is relied upon by both parties:

"Rule No. 1 Promotion

"1-A-1. Employees appointed to supervisory or any position not covered by a rules agreement will retain and continue to accumulate seniority under the provisions of this agreement.

"In the event an employee is promoted to a class or craft covered by another agreement which grants him seniority rights he will retain and continue to accumulate seniority under this agreement. He may return to the class or craft from which promoted, only after exhausting seniority in accordance with the other agreement.

"An employee so promoted may waive his seniority right under the other agreement and return to a position covered by this agreement when it is agreed to by the General Chairman and General Manager."

Employees contend that an employee who is "promoted to a class or craft covered by another agreement must, in addition to exhausting seniority under the other agreement, receive agreement between the General Chairman and General Manager before he can return to a position covered by the Cooks' agreement."

Aside from the fact that the rule is vague with respect to the meaning of the term "promoted", the assignment of Mr. Blunt to a Fireman's position does not per se deprive him of his seniority as a Cook. It is not uncommon in the railroad industry for an employee to hold dual seniority and Rule 1-A-1 does not abrogate this right. As a matter of fact this rule grants him the right to "continue to accumulate seniority under this agreement."

On the dates when Mr. Blunt worked as a Cook in December, 1968 there were no Firemen positions available to him. He had exhausted his seniority rights under the Firemen's agreement. There was nowhere for him to go except to exercise his seniority rights as a Cook. The mere fact that Mr. Blunt was guaranteed 200 hours pay per month under the Merger Protective Agreement is immaterial to this issue.

Mr. Blunt did not waive his seniority on the Fireman roster. The third paragraph of Rule 1-A-1 applies only when an employee waives his seniority to his promoted position and seeks to return as a regular employee to his other seniority position. Under those circumstances only is an agreement re-

quired between the General Chairman and General Manager. That is not the case here.

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 Carrier did not violate the Agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 30th day of April 1970.