

Award No. 338
Docket No. 362
2-DL&W-EW-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That seniority date of Edward McMillan, electrician, on the traction substation seniority roster is August 1, 1932, the date he was assigned to the position of chief substation operator in the traction substation, and that seniority roster revised and issued October 1, 1937, and April 1, 1938, be changed from July 1, 1904 to August 1, 1932.

EMPLOYEES' STATEMENT OF FACTS: Mr. Edward McMillan was employed as electrician, at Scranton electric shop, located on the Scranton Division, July 1, 1904, promoted to position of foreman at Scranton (exact date unknown); he was transferred to New Jersey as a foreman in 1926, and held foreman's position until he was demoted August 1, 1932, and assigned to position of chief substation operator at the West End Substation, a position recognized as electricians' work and covered by the Maintenance of Way and Structures Department agreement, effective December 3, 1935.

By reason of a representative vote in accordance with the provisions of the Railway Labor Act as amended, an agreement was reached, taking over the existing agreement dated November 1, 1922, and revised July 5, 1934, between management and Shop Craft Mechanic's Association, by the System Federation No. 78, September 14, 1934. Said agreement was in force until a new agreement was negotiated covering the employees in the Maintenance of Way and Structures Department and signed December 3, 1935.

Prior to the effective date of the agreement, December 3, 1935, it was recognized by management and the committees, the seniority districts were by division known as the Scranton Division, Morris and Essex Division, and Buffalo Division. So far as this particular case is involved, although there was no agreement in effect covering the wages and working conditions of employees in the Maintenance of Way and Structures Department, subsequent to the National Agreement until the present agreement as of December 3, 1935, containing rules covering the seniority rights of employees, known as Rules 14, 15, and 26, reading as follows:

PROMOTION TO FOREMEN

Rule 14. "Mechanics in service will be considered for promotion to position of Foremen or Assistant Foremen.

such a man has been in the service of the company continuously since July, 1904. Apparently all of the men comprising the Traction Substation forces at Hoboken, N. J. and on that seniority list, realize this for each and every one has consented and agreed that the seniority date of Mr. McMillan should be August, 1906. (See Exhibit B.)

We are familiar with the decisions of the Board heretofore made relating to Rule 14 which provides that when a foreman is returned to the rank of a mechanic through no voluntary action of his own, he may take his seniority as a mechanic where such seniority was acquired. In those cases, the return to rank was at a time when an agreement was in effect. But this case is different from any we know about in that Mr. McMillan was returned to the rank of a mechanic before any agreement was signed or in effect. When he returned to the ranks at Hoboken, N. J., there was no agreement or any rule thereof which he was bound by, such as Rule 14 of the agreement effective December 3, 1935. In August, 1932, when Mr. McMillan was returned to the ranks, he was the oldest man in point of service with the railroad company among the electricians in the Traction Substation forces. It is our view that under these circumstances it is not fair or equitable to compel him to accept the seniority date as of August, 1932, in the Traction Substation Division at Hoboken when he actually has been in the service of the company since 1904 and long before any other man on the Traction Substation seniority list.

If the Board in this case finds that Rule 14 is retroactive and decides that the seniority date of Mr. McMillan on the Traction Substation list is August, 1932, then in such case Mr. Millan should be entitled to return to the Scranton District and have his seniority date in that district shown as August, 1906.

Inasmuch as it has been the policy of this Board to base its decisions in cases where a seniority date is in question on the facts, we submit that in this case the seniority date of Mr. McMillan should be August, 1906 when he became an electrician in the employ of the railroad company.

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 employe 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.

The parties to said dispute waived right of appearance at hearing thereon.

Edward McMillan first performed service as a mechanic at Hoboken, August 1, 1932.

The existing rules of agreement and the procedure followed since their adoption sustains the employes' claim.

AWARD

Edward McMillan's seniority as electrical worker at Hoboken shall date from August 1, 1932.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of May, 1939.