

Award No. 663

Docket No. 638

2-T&P-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Apprentice W. L. Nichols was transferred from Shreveport, Louisiana, to Monahans, Texas, May 31, 1939, and worked alone up to June 12, 1939. Monahans is a small point on the west end of The Texas and Pacific Railway where only one carman is employed. Apprentice Nichols was transferred from Monahans to El Paso, Texas, about June 13, 1939. Nichols was transferred to both Monahans and El Paso in violation of Rule 24 (h) of the current agreement. That he was assigned to position of car checker at El Paso before he finished his apprenticeship and permitted to fill a mechanic's position and acquire seniority as a mechanic at El Paso, while mechanics were laid off at other points.

Claim is made for pay for Carman J. A. Thomas from June 16, 1939, at which time Apprentice Nichols was assigned to checking job at El Paso, up to December 22, 1940, at which time Thomas was called back to service at Texarkana. Thomas served his apprenticeship in the car department on The Texas and Pacific Railway and his seniority dates as a mechanic at Texarkana 9-29-33. Thomas being furloughed at that time he was entitled to the position

EMPLOYEES' STATEMENT OF FACTS: W. L. Nichols, was started as a carmen apprentice at Shreveport, La. a small point, under provisions of Rule 24 (h) of the current agreement.

"Apprentices started at points where there are not adequate facilities for learning all branches of the trade will be transferred to points where their training may be successfully completed. * * *"

El Paso, Texas is a smaller point than Shreveport, there being only ten carmen employed at El Paso, to nineteen at Shreveport. Neither point provides any shop training, both being light repair and inspection points for carmen. Under the provisions of the rule quoted, Nichols should have been sent to Marshall, Texas (42 miles West of Shreveport) where the company operates a passenger car repair and building shop, mill machinery, air brake, test racks, and can provide this class of training as well as general freight experience. Instead of doing so, he was sent to El Paso, 849 miles west of Shreveport, where there are no facilities to give him even as much training as he had already received at Shreveport.

There can be no dispute in connection with the above work. We show no favoritism but endeavor to give each carman apprentice the above training. Apprentice Nichols had practically completed his apprenticeship prior to this schedule being placed in effect, and for this reason we were desirous of allowing him time on car checking, train yard, etc. We have at all times transferred apprentices from one point to another to learn all branches of the trade. Our records indicate that since the above schedule was placed in effect we have transferred twenty-five carmen apprentices from one point to another for the purpose of learning all branches of the trade and we have received no other complaints as to these transfers being made. It must be agreed in view of this that the above complaint is unfounded.

Employes state that Apprentice Nichols was allowed to establish seniority as carman at El Paso while other carmen were furloughed at other points, namely, J. A. Thomas, carman at Texarkana. It is an agreed fact that we have point seniority and no rule for use of men from other points except as provided for in Rule 18 (i). As a matter of information, however, our check shows that at this time we had car repair program on at both our Lancaster and Marshall freight car shops and every available man was sent to these points for service. Thomas did not apparently desire to go to either Ft. Worth or Marshall but instead desired to remain at Texarkana and work extra both as carman and car helper. There is nothing in the agreement that compelled these employes to go to other points for such work, consequently several of them did not transfer. There being no provisions requiring them to accept employment at other points—conversely no penalty could justifiably be imposed upon the carrier.

We must again state that employes on this railway have only POINT seniority and not system. It has been shown and proven beyond doubt that employes do understand that they only have point seniority by refusing to transfer to positions at other points when furloughed at their home point.

J. A. Thomas, whom the committee is claiming pay for in submission of this case to your Board did not in any manner indicate to the carrier that he desired to transfer to El Paso and all during the handling indulged in between the committee and the representatives of the carrier, the committee did not at any time so much as mention the name of Thomas, of Texarkana, and indicate to the carrier that Thomas desired to go to El Paso.

Instead, as previously stated, Thomas was in no manner mentioned in this case until it was submitted to your Board by the organization March 5, 1941, approximately three months, according to their own statement, after Thomas had secured a regular position as carman at the point where he holds seniority, Texarkana.

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 were given due notice of hearing thereon.

The claim as to the impropriety of the transfer of Apprentice Nichols to Monahans was not handled in the usual manner and is not properly before this Division; his subsequent transfer as such to El Paso did not, in light of the facts of this proceeding, constitute any violation of Rule 24 (h); his assignment there at mechanic's rate as of June 16, 1939, prior to the completion of his apprenticeship, was immediately cancelled upon protest of the employe representatives and provides no support for remedial action; and his assignment there at mechanic's rate as of August 5, 1939, after he had completed his apprenticeship, did not constitute any violation of Rule 18 (i).

In these circumstances no substantive basis has been established for the monetary claim of Carman J. A. Thomas; and his claim is further vitiated, under Rule 22 (b), by the fact that it was not submitted until two and a half months after his alleged grievance had been removed through his reemployment.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 4th day of December, 1941