

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)
DENVER & RIO GRANDE WESTERN RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES.—That seniority date of Frank Miller be changed from September 27, 1926, to October 9, 1922, the original date of his employment as a carman.

EMPLOYEES' STATEMENT OF FACTS.—Frank Miller was employed October 9, 1922, as a car inspector in train yard and laid off in reduction of force December 21, 1923. He was recalled to work on January 1, 1924, as a second class mechanic, and although he bid on every job that was bulletined, he was not returned to his inspection job until September 27, 1926, his present seniority date as recognized by the management.

POSITION OF EMPLOYEES.—Frank Miller, having established his seniority as a car inspector on October 9, 1922, should retain that date regardless of his working upon a second class position between January 1, 1924, and September 27, 1926. The reason for his leaving the service of the carrier on December 21, 1923, was because of a reduction in force. He was out of the service only ten days when he was recalled to service as a second class mechanic, holding the latter position to September 27, 1926, when he was again placed upon a first class rating. There was no rule in the agreement existing at that time that provided for loss of seniority when working on a lower class during furlough.

During the period in question there was an overlapping of rates among first and second class mechanics, as shown by the following classification, Rule 51, Freight Carmen's Work, Special Rules—Classification and Rates:

“First Class: Building, rebuilding and heavy repairs of freight, work, and caboose cars, either all steel, or steel underframe and steel superstructure frame, or all wooden equipment, doing the necessary laying out, with or without drawings, including air piping, cleaning, oiling, stencilling and testing air brakes (including passenger cars); all car inspecting, both passenger and freight, and all work that may be connected therewith. (Men to do inspecting must be able to speak and write the English language and have a fair knowledge of A. R. A. Rules and Safety Appliance Laws.) Operating wood-working machines, located in repair tracks; shop carpenter doing all miscellaneous carpenter work, and any other work of same or lower rates which employe is capable of doing.

“Rate: 63 to 75 cents per hour, according to character of work produced by workmen, both with respect to quality and quantity of output.

“Second Class: Running repairs, both heavy and light, freight, work, and caboose cars; making grain doors, standard or L. C. L. bracing; removing and applying journal bearings and wedges; applying journal box lids; brake beams, hangers and brake shoes, and all similar work; oiling and packing journal boxes, and in addition to work outlined, all car work not included in a higher rate, and any work of same or lower rates which employe is capable of doing.

“Rate: 54 to 65 cents per hour, according to character of work produced by workmen, both with respect to quality and quantity of output.

“NOTE.—Freight carmen, steel and wood car workers, to be put on separate seniority list.”

As shown by the above classification of work and rates, it was difficult for management and men to determine what class an employe belonged in for the reason that they were performing similar work. This fact is further

substantiated by Exhibit B which is a copy of a letter from the general mechanical superintendent. On April 1, 1929, an increase of 4¢ was given first class men and 3¢ to second class men. All employes found working on repair track at that time, except air brake men, were reclassified as second class men and given the maximum second class rate of 67¢, and the air brake men and inspectors were given 4¢, or 68¢, minimum first class rate.

The employes claim the company had no right to reclassify them as they were compelled to take a helper and complete the repairs to any car to which they were assigned, both wood and steel, regardless of whether it was heavy or light repairs.

The memorandum of agreement of August 17, 1934, which was signed between the officers of System Federation No. 10 and the management of the Denver & Rio Grand Western Railroad, taking over the agreement in effect at that time, provided that seniority lists would be posted and the employes would have until January 1, 1935, to protest their seniority dates upon same. This case was taken up prior to that time and has been under discussion continuously since.

On January 5, 1934, a memorandum of understanding was reached by and between the chairman of the carmen and the management with reference to a new date for Mr. Miller. However, Mr. Miller protested this settlement and carried same back to carmen's local No. 18, and the members of that local voted to have their representative carry the case to the higher officials, and submitted further evidence substantiating his claim for revision of his seniority date.

Since this date further efforts have been made by the general chairman to settle this case satisfactorily, and on June 12, 1936, in a conference with the general manager, it was impossible to make a further adjustment, and we are, therefore, requesting that the seniority date of Mr. Frank Miller be changed from September 27, 1926, to October 9, 1922, the original date of his employment as a carman.

POSITION OF CARRIER.—The records in this case indicate that Mr. Frank Miller entered our service at Pueblo as second class freight carman January 1, 1924, with an hourly rate of 54 cents. This rate was subsequently increased to 55 cents as result of a general increase of one cent per hour effective December 16, 1926.

September 4, 1927, Mr. Miller was made a first class freight carman and was shown on the seniority roster as such as of that date.

On December 26, 1934, the general chairman representing the employes wrote the master mechanic at Denver in connection with the seniority status of Mr. Miller and other carmen at Pueblo and Colorado Springs, and requested that conference be arranged to discuss the then pending cases.

The master mechanic met the general chairman to discuss the seniority status of the employes involved on January 5, 1935, and as result of this conference after a check of the records it was agreed by them that the correct seniority date of Mr. Frank Miller should be September 27, 1926, instead of September 4, 1927.

Carrier's Exhibit A is copy of general chairman's letter of December 26, 1934, as well as copy of joint letter signed by the general chairman and the master mechanic dated January 5, 1935, in which it is agreed that the correct seniority date for Mr. Frank Miller as a first class freight carman is September 27, 1926.

The carrier contends that the records indicate Mr. Miller's correct seniority date as a first class freight carman is September 27, 1926, and further contends that the joint letter of January 5, 1935, signed after a joint check of the records constitutes an agreement which your Board has no authority to set aside.

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.

The Railway Labor Act (as approved June 21, 1934), among its many provisions, prescribes:

"GENERAL PURPOSES

"SEC. 2 * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Also:

"GENERAL DUTIES

"SECOND. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute."

This dispute was handled in accordance with the above provisions of the amended Railway Labor Act and properly settled between the duly authorized representatives of the employes and the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 15th day of December, 1936.