

Award No. 135

Docket No. 141

2-T&P-BM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

THE TEXAS & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: It is the claim of the employees that Boilermakers A. Grunwald and R. L. Davis were unduly disciplined and unjustly dealt with by reason of their being arbitrarily removed from the positions of leadman and inspector at the Lancaster shops, Fort Worth, Texas, and because of which we request that Messrs. Grunwald and Davis be restored to their former positions as leadman and inspectors and fully compensated for whatever monetary loss they have been caused to suffer by reason of this unjust treatment; the compensation herein requested to represent the difference between that amount actually earned and that amount which they would have earned as leadmen and inspector, since the date of their arbitrary removal from such positions which was December 28, 1935, until such date as they are restored to their former position as leadman and inspector at Fort Worth shops.

EMPLOYEES' STATEMENT OF FACTS: Boilermakers A. Grunwald and R. L. Davis, and others had served as leadman and inspector for a number of years, and in former years these particular positions were paid a differential rate of pay. Several years ago the differential rate was discontinued by management, although the respective duties of such employees were not altered in any respect.

The employees herein involved (Grunwald and Davis), initiated a dispute having for its purpose the restoration of the differential rate of pay for leadman and inspector as provided for in Rule 24 of the current agreement, which differential had been previously discontinued by the management, and while this grievance or dispute was pending, Boilermakers Grunwald and Davis were, on December 28, 1935, arbitrarily removed from such positions as leadmen and inspectors, and other boilermakers with less experience and seniority rights were then assigned to these positions and immediately paid the differential rate that was being contended for by Grunwald and Davis.

Based upon the dispute initiated by Messrs. Grunwald and Davis, a hearing was duly held before the National Railroad Adjustment Board, Second Division, (See Award No. 64, Docket No. 76) and your Board sustained the claim of these employees and found and declared Messrs. Grunwald and Davis to be leadmen and inspectors and consequently directed the carrier to pay them as such, which has been done for a period of time up to the date of their removal from the position of leadman and inspector which incident occurred December 28, 1935, and since which date the differential rate of pay as provided for in Rule 24 has been paid to those assigned to succeed Grunwald and Davis.

It will be noted that Rule 22 (d) provides that seniority will govern **only** when fitness and ability are equal; and Rule 12 provides that mechanics having sufficient experience and ability will be given consideration in the selection of foremen.

We also wish to call the Board's attention to the fact that these men were not taken off of the lead jobs; these jobs being established in December, 1935, Grunwald and Davis were not assigned. Six months later, in June, 1936, the organization submitted to the Board case designated as No. 76, claiming that the work that had been performed by these men as boiler inspectors should have given them the lead rate and claimed time during such periods that they were on these jobs; this being covered by Award No. 64, and the claimants, Grunwald and Davis, were paid, together with Williams, in line with that award.

Exhibit A is copy of my letter of September 15 to Mr. L. A. Freeman, international representative, following a conference with him on that date, and his reply of September 22, in which he admits Award No. 64 was complied with.

Exhibit B is copy of Assistant General Manager Tobin's letter of December 17, following conference December 5 with International Representative McGee and H. E. McGowan, president, System Federation No. 121 (letter addressed to Mr. McGowan).

It will be noted that International Representative McGee agreed in conference that there is no rule requiring a senior man to be appointed as leadman.

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.

Leadworkmen come under the provisions of the agreement between the parties.

Rule 22, paragraph (d), provides:

"Seniority will govern when fitness and ability are equal."

Mr. Grunwald had been performing the work of leadman-inspector for approximately eleven (11) years, ten (10) months, and Mr. Davis approximately one (1) year, seven (7) months, and no evidence was introduced which showed their services had been other than satisfactory, or that their fitness and ability were not equal to the junior employees assigned to this work.

AWARD

Messrs. A. Grunwald and R. L. Davis shall be restored to the position of leadworkmen and paid the difference between the leadworkermen's rate and that which they did earn from December 28, 1935.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of February, 1937.