

Award No. 227

Docket No. 232

2-MPL-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 14, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

MISSOURI PACIFIC LINES (GULF COAST LINES)

DISPUTE: CLAIM OF EMPLOYEES: Claim of Machinist H. E. Carson for pay for all time lost as a result of being displaced by working foreman at Brownsville, Texas.

EMPLOYEES' STATEMENT OF FACTS: Machinist Carson entered the service of the Gulf Coast Lines April 9, 1927, and was sent to the foreman at Harlingen to work as machinist, and worked at Harlingen from April 9, 1927, until July 30, 1927, at which time he was cut off in reduction in force. Carson reentered the service at Brownsville as machinist on August 16, 1927, and worked there as machinist until May 6, 1932, at which time he was cut off in reduction of force. On May 7, 1932, he was appointed night mechanical foreman at Brownsville and worked on this job from May 7, 1932, until May 14, 1932, at which time he was replaced by Mechanical Foreman Smith. Carson was then sent to Mission, Texas, on May 14, 1932, and worked as a machinist until June 1, 1932, at which time he was cut off in reduction of force at Mission.

POSITION OF EMPLOYEES: During the time Machinist Carson was cut off at Harlingen he was met by Master Mechanic Carter and sent to Brownsville to relieve the night machinist. He was instructed to go on this night job and stay until relieved. It was understood that the master mechanic would make a trip to this point in a short time and further discuss his duties and other matters pertaining to the job. The master mechanic did go to Brownsville, and in conversation with Machinist Carson told him he was trying to get a night foreman permanently placed at this point to improve the service and was seeking authority for the appointment, leading Carson to believe that he was carried as a night foreman, in which event the question of where his seniority would be arose. When Carson was cut off in reduction of force and displaced by night foreman, he carried the matter to the general committee of the Association of Shop Crafts, who finally ruled that his seniority was at Brownsville, but did not give him any satisfaction about being displaced. After some period of time, and not having any relief in this case, an attorney at Brownsville was engaged to try and adjust the dispute. The attorney handling this case finally agreed to turn the matter over to representatives of the Railway Employees' Department, A. F. of L., for further handling. The question of Machinist Carson's seniority was determined and placed at Brownsville, and is not an issue in this case. We contend that under the existing Rule 23, Machinist Carson should have been transferred and given preference to the first opening for a machinist at Kingsville or DeQuincy, which are the main shop points and where men have been hired since he was cut

So long as the management conformed to the terms of agreement on I-GN Railroad, it made no difference where they hired their machinists. **Mr. Carson did not then, nor does not now hold any seniority on the I-GN Railroad, or the SAU&G Railroad.**

Fourth

Carrier contends that it was privileged to approve or disapprove Mr. Carson's application any time within sixty (60) days from the time he entered service on I-GN Railroad as is covered by working agreement in effect on I-GN Railroad, Rule 33, Section (b), which reads as follows:

"Applicants for employment shall fill out necessary application blanks and employment shall be considered temporary until application has been approved. The application shall be approved or disapproved within sixty (60) days after applicant begins work. No applicant shall be discharged after the expiration of sixty (60) days on account of application not being approved, except in the event of applicant giving false information, when approval may be revoked at any time."

No investigation is required under these conditions; therefore, Mr. Carson was not entitled to an investigation.

Fifth

Mr. Carson's case was handled by the duly elected representative of the machinists and himself personally and agreement was reached and claim closed in November, 1936. **In the handling and settling of claims in accordance with the provisions of working agreement, when a settlement is made, it certainly should mean something and not be subject to re-opening at the will and pleasure of the complainant due to the fact that he was not satisfied. When a settlement is made, it certainly should stand.**

The carrier contends that they have lived up to all their obligations to Mr. Carson under the terms of agreement, and request the Board to deny any and all of his claims presented.

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 argument and evidence submitted in this case were complicated by the variety of claims made.

The claim of the employes reads:

CLAIM: "Pay for all time lost as a result of being displaced by working foreman at Brownsville, Texas."

The claim as set out in the carrier's submission reads as follows:

"FIRST: Claim that he was improperly classified as a machinist at Brownsville.

SECOND: Claim that he was improperly displaced by working foreman at Brownsville.

THIRD: Claim that the carrier violated Rule 23 in employing junior man cut off on the StLB&M Railway on another railroad and covered by separate agreement under the jurisdiction of the same general manager.

FOURTH: Claim that H. E. Carson was improperly removed from service at South San Antonio account application disapproved instead of formal investigation to disclose his incompetency."

The claim as presented by the employees and that of the carrier marked **SECOND** are identical, both of which are without merit because of lack of evidence to support the claim; for the same reason the claim presented by the carrier marked **FIRST** is also without merit.

The claims as set out in the carrier's submission and marked as **THIRD** and **FOURTH** are irrelevant because of being subject matter not coming within the scope of the agreement that applies in the instant case.

The whole question involved in this dispute is the determination of the proper seniority point of H. E. Carson as a machinist, and on this question the Division finds that H. E. Carson holds seniority at Brownsville, Texas, and at no other point.

H. E. Carson was and is entitled to be returned to work as a machinist at Brownsville when the force is restored, in accordance with the provisions of paragraph (c) of Rule 21; and while furloughed at Brownsville he is entitled to the provisions of Rule 23.

A full review of the case indicates that the only violation of the rules was when a junior machinist was temporarily used at Brownsville, Texas, for a period of fourteen (14) days while Machinist H. E. Carson was furloughed.

AWARD

Claims disposed of in accordance with above findings and H. E. Carson will be compensated for the fourteen (14) days' time H. J. Williams was temporarily used at Brownsville, Texas.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of March, 1938.