

Award No. 272

Docket No. 259

2-MP-FO-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Fireman and Oilers)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That seven laborers, who were displaced by seven boilermaker helpers at Sedalia, Missouri, be compensated for all time lost which their seniority would have entitled them to subsequent to April 1, 1937.

EMPLOYES' STATEMENT OF FACTS: On March 5, 1937, seven laborers made request of Shop Superintendent Callender at Sedalia, Missouri, to become boilermaker helpers. They were assigned and worked as such until April 1, 1937, when they were affected by force reduction. When reduction of force was made in the boiler shop, the seven above mentioned boilermaker helpers displaced seven laborers.

POSITION OF EMPLOYES: Management contends that Rule 13, Paragraph (b), of the current wage agreement covers this case.

"(b) Employees accepting promotion and failing to qualify within thirty (30) days may return to their former positions. Employees declining promotion will not lose their seniority."

We contend that this rule applies only when laborers take promotion within the scope of the firemen and oilers' craft and does not apply when laborers take promotion from the firemen and oilers into another craft.

We desire to call the Honorable Board's attention to Exhibit B, affidavit of former General Chairman Giesick; also Exhibits C and D, in which you will note that local management at Dupon, Illinois, as well as Chief Mechanical Officer O. A. Garber agreed that when a laborer transferred to another department that he had given up his rights as a mechanical laborer. We, therefore, respectfully request that the seven laborers who were displaced by seven boilermaker helpers be compensated for all time lost.

CARRIER'S STATEMENT OF FACTS: On March 5, 1937, our boiler-maker force in the Sedalia back shops was augmented, and following a practice that has prevailed at that shop point for a number of years, laborers in service as such were given preference in filling vacancies as boilermaker helpers under Rule 13 of wage agreement dated November 1, 1934, with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, reading:

"Rule 13

(a) Promotions shall be based on ability, merit and seniority. Ability and merit being sufficient, seniority shall prevail, the rank-

would not lose their seniority as laborers until after they have served in the class to which promoted for a period of thirty (30) days or longer. This was the application of this rule in the former agreement with the Missouri Pacific Association of Power Plant Employees, Boilerwashers, Coach Cleaners, Shop Repair, Track and Roundhouse Laborers and which rule incidentally was adopted without change in negotiating the agreement with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, dated November 1, 1934.

These seven laborers, who were promoted to boilermaker helpers, served as such for a period of less than thirty (30) days, and under the practice of applying Rule 13 of our wage agreement with the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, they were justly entitled and were permitted to return to work as laborers when released as boilermaker helpers, displacing junior laborers for whom the employees are now filing claim for alleged time lost.

There is no basis or practice under our rules that would sustain the employees' claim and same should properly be denied.

OPINION OF THE DIVISION: The facts in this case are briefly stated. Seven laborers, under the contract between the carrier and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, were transferred to positions as boilermaker helpers, coming thus under another contract. They held the positions as boilermaker helpers from March 5, 1937, to April 1, 1937, when they were released in a reduction of force. They were placed back as laborers, thus displacing seven junior laborers and the junior laborers claim that the men could not be returned to their craft after being advanced to the position of boilermaker helpers.

The carrier relies upon Rule 13 (b) of the agreement and contends that since the men had served less than thirty days as boilermaker helpers, they could be returned to their original positions. The carrier does not contend that if they had served more than thirty days that they could be so returned.

The employees contend that the thirty-day rule applies only to workers advanced within their own craft and failing to qualify.

The wording of the thirty-day rule does not warrant the conclusion that the rule applies when men are advanced from one craft to another under a different contract and who are later let out in a reduction of force. The conclusion that the thirty-day rule does not apply is strengthened by the evidence in the docket that the carrier attempted to negotiate an interpretation to that end, which was refused by the employees.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of October, 1938.