

Award No. 301

Docket No. 307

2-StLSW-MA-'39

**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. 45, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist J. F. Hartung should be placed on the machinist seniority list as machinist oxwelder.

POSITION OF EMPLOYEES: That Machinist J. F. Hartung was employed as machinist in the Pine Bluff shops, making application, and went to work in car department wheel gang on August 17, 1925, and worked in that capacity until October 20, 1925.

On October 20, 1925, it was the company's desire to put on another welder. Machinist J. F. Hartung, then working in car department wheel gang as machinist, and having had several years experience as welder, was transferred by the company from the car department wheel gang to locomotive department back shop and placed on welding job doing machinist welding.

Through a clerical error, Machinist J. F. Hartung was placed on a special welders' seniority list without Machinist Hartung knowing anything about the change, or that he was placed on a special welders' seniority list instead of the machinists' seniority list as his time cards indicated. All time cards were rated machinist oxwelder.

And there being no seniority lists posted for several years, as will be noted later on in the sixth paragraph of a letter from Superintendent of Motive Power W. J. Miller to General Chairman C. E. Landreth, under date of June 20, 1938, and Machinist J. F. Hartung, thinking he was carried as machinist oxwelder, there was no protest made. Machinist J. F. Hartung being out of the service of the company at the time the new agreement was negotiated, there was no reason for the protest at that time.

It was agreed at the time the special welders' seniority list was put into effect by the company union representative and the company that there would only be three (3) welders placed on the special welders' seniority list.

When Machinist J. F. Hartung was reinstated, there was at that time already three (3) welders carried on the special welders' seniority list, and Machinist J. F. Hartung being placed on the list made a total of four (4), increasing the list one above what was agreed to by both parties when put into effect. When shops are closed, he is deprived of the right to exercise his seniority as machinist, causing him to lose much time that he is entitled

ity lists, one as Blacksmith, Car Dept., date of 4-24-30 where he should have been restored to when Mr. Hartung was reinstated, the other date 5-2-34 on welders' seniority list.

We are asking that the oral agreement that was agreed to at the time that we negotiated the agreement be complied with and that Mr. Kenneweg be removed and restored to his proper classification as Blacksmith as per his seniority date as shown on seniority list."

Evidently at that time, the federation considered Hartung as belonging to the welders' list and were insisting that the list be kept to three by the transfer of a junior man from the list. If Hartung belonged on the list of welders and was No. 2 on that list, then the question of who else was to be retained on the list is not now before this Division. That question would have to be settled under the rules or by negotiation of the parties.

The conclusion from the facts is that Hartung was employed in 1925 as a machinist and served about two months when he was transferred to another department, and placed on the seniority list as an oxwelder, where he remained until discharged in 1934. This Division restored him to his place on the seniority list and it was clearly understood that he was being restored as an oxwelder. In fact, his name never appeared anywhere else from January 1, 1926, than on the oxwelders' list. He derived such benefits as came to oxwelders during the period from 1925 to the time of his discharge and, afterwards, from the time of his reinstatement until the present. He cannot now claim to have been a machinist all these years when he was not so listed and when he did not, at any time, protest his listing as an oxwelder nor claim listing as a machinist. Even if there were not the special circumstances listed above, the conclusion would still be that Hartung could not now claim rights on which he had slept for thirteen years.

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 evidence in this docket indicates that the complainant was properly listed as an autogenous welder and that his claim to be listed as a machinist oxwelder is unsupported.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1939.