

Award No. 315

Docket No. 316

2-DL&W-EW-'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. 78, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: (a) That seniority date of Thomas Maddock, electrician, be as of November 1, 1924, as accepted and agreed to between management and local committee under the provisions of the Maintenance of Way and Structures Department Agreement, Delaware, Lackawanna and Western Railroad Company, effective December 3, 1935, and the seniority list was accepted on behalf of both parties signatory to the agreement, as of October 1, 1936.

(b) That Thomas Maddock, electrician, at Scranton, Pennsylvania, with a seniority date of November 1, 1924, was laid off from February 1, 1938, until March 7, 1938, while a junior man was retained in service and working, and, therefore, should be compensated for all time lost between dates mentioned.

EMPLOYES' STATEMENT OF FACTS: That Thomas Maddock is an electrician working in the maintenance of way and structures department, covered under a separate seniority list from the maintenance of equipment department, at the Scranton shops. That he has had four years' experience and went to work as a journeyman electrician on November 1, 1924, which date was accepted by the committee and management until a new agreement was negotiated by reason of a representation vote in accordance with the provisions of the amended Railway Labor Act and signed on December 3, 1935, in behalf of the management by Chief Engineer G. A. Phillips and in behalf of the employees by General Chairman Thomas Maddock; that in the application of this agreement the seniority list at various points, of electrical workers and other skilled mechanical trades in the maintenance of way departments, were examined, scrutinized and accepted by the management and the employees on October 1, 1936; that the work performed by Thomas Maddock and one other electrical worker in the maintenance of way department under the electrical engineer was to maintain and repair the electrical equipment in the Scranton shops, comprised of erecting shop, blacksmith shop, and foundry, and in the Scranton roundhouses, and covered by Rule 50 in the maintenance of way department agreement, effective December 3, 1935; that on February 1, 1938, this work was transferred from the maintenance of way department to the maintenance of equipment department and employees thereof, in strict violation of the provisions of the maintenance of way department agreement and System Federation No. 78, which provides that:

way prejudiced in his seniority standing by any delay or inaction on the part of Baldauff, it is submitted that there are no equitable grounds on which Baldauff can properly be denied the seniority to which he is entitled upon the facts. And as this Board said in Award No. 264:

"The Division has had before it similar issues and has decided that when a seniority date is in question the facts decide the issue."

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.

Thomas Maddock was employed by the carrier November 1, 1924. The records of the carrier disclose that he left the service of the carrier in March, 1926, and was rehired in April, 1926.

After the agreement was entered into between the carrier and the union, in 1935, a seniority list was prepared on which Maddock was given the original date of hiring as his seniority date. He was carried on the roll as of that date until January, 1938, when the carrier issued a new seniority list giving Maddock the date of rehiring as his seniority date. This was followed by a lay-off in which Maddock was furloughed while Baldauff, the man who had superseded him on the seniority list, was retained. The proper seniority date for Maddock, therefore, became an issue.

Maddock claims that he had a leave of absence for the period he was out of service in 1926, but the evidence is insufficient to prove this as against the contemporaneous record.

This Division has uniformly held that under circumstances similar to those in this case, the date of rehiring is the proper seniority date.

The claim that Baldauff did not protest the placing of his name below that of Maddock on the 1936 list is not sustained by the evidence or the rules. The rules make no provision for protest within any fixed time. Baldauff did protest to the union that his seniority rating was above that of Maddock.

This case is not similar to other cases decided by this Division, notably Award No. 186, because in those cases it was held that the specific issue had been settled by agreement between the carrier and the employe representatives and there was no case pending before the Division.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1939.