

Award No. 328
Docket No. 310
2-CRI&P-CRI&G-FO-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

CHICAGO, ROCK ISLAND & GULF RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: Should the power plant engineers and firemen, who were promoted to such positions from mechanical department laborers prior to April 15, 1938, retain their original seniority date as laborers under the provisions of Item 2 of Agreement, effective April 15, 1938?

JOINT STATEMENT OF FACTS: In September, 1934, an election (under jurisdiction of the National Mediation Board) of the mechanical department employees was held to determine the organizations that the Rock Island Employees desired as their representative. From 1922 to 1929, the mechanical department laborers were represented by the maintenance of way organization, but as the result of a secret ballot, effective April 15, 1929, the committee representing the mechanical crafts secured the right to represent these laborers. However, the power plant employees continued under a separate agreement from that of the laborers and in voting the employees in September, 1934, the power plant employees were voted separately from the mechanical department laborers, and in certification of October 13, 1934, by the National Mediation Board Case R-17, the International Brotherhood of Firemen, Oilers, Helpers, Roundhouse and Railway Shop Laborers, affiliated with Railway Employees' Department, A. F. of L., was designated as the representative of roundhouse, shop and car department laborers, and the question of representation for power plant employees was held in abeyance, awaiting decision of the Mediation Board.

Under date of January 9, 1935, Case R-17, the National Mediation Board rendered a supplemental certification grouping the power plant employees with the mechanical department employees, and certified that the International Brotherhood of Firemen and Oilers, etc., was the duly designated and authorized representative of the combined groups. An injunction was obtained in the U. S. District Court at Topeka, prohibiting the railway from applying this certification and, therefore, during the life of this injunction the old group of Brotherhood of Railroad Shop Crafts of America continued to represent the power plant employees, while the firemen and oilers' organization represented the mechanical department laborers.

By stipulation, the case was dismissed from the District Court of the U. S., Topeka, Kansas, effective September 30, 1937. This court release was received in December, 1937, and on petition of the general chairman of the firemen and oilers the following notice was issued by the management to the mechanical department officers under date of January 3, 1938:

In other words, it does not restore to such stationary engineers and firemen previous shop laborer's rights which they automatically or otherwise lost under provisions of former agreements.

Our position is based on the language of the last paragraph of the Memorandum Agreement of April 15, 1938, which reads as follows:

"Dated at Chicago, Ill. this Fifteenth day of April, 1938 and effective on and after this date."

POSITION OF CARRIER: The Carrier maintains that Item 2 of agreement of April 15, 1938, specifically protects the power plant engineer and/or fireman in his original date as a laborer when he was, prior to that date, promoted from a laborer position to that of a stationary fireman and/or engineer, and it was understood by the representative of the Carrier that this was the understanding so that those employees who had been promoted from laborers and were then filling positions of firemen and/or engineer in the power plant, would not be penalized because of the temporary dispute as to their right to representation, and that had these employees been given representation which the National Mediation Board indicated they should have, there would have been no question about their retaining their original seniority date as laborers, and to now deprive them of that seniority right as compared with an employee promoted since April 15, 1938, from position of laborer to that of a power plant fireman and/or engineer, would, to say the least, be a discrimination. The privilege of again picking up the seniority which they originally held was, however, not to be effective until April 15, 1938, and thereafter so as to avoid any disputes as to loss of wages during the prior period when they were temporarily deprived of the privilege of going back in the groups coming under the jurisdiction of the firemen and oilers' organization. This thought is expressed in the management's letter of April 19, 1938, quoted above, transmitting the Memorandum Agreement of April 15, 1938, to its mechanical department officers. In other words, it is the Carrier's position that the employees promoted in the past from laborer positions to power plant fireman and/or engineer are entitled to the same consideration as those promoted subsequent to April 15, 1938, and it was with that understanding on the part of the management's representative that the agreement of April 15, 1938, was entered into, as indicated above, in conformity with the certifications received from the National Mediation Board.

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 waived right of appearance at hearing thereon.

The evidence of record does not support the position taken by the employees in the instant case.

AWARD

Yes, original seniority of employees involved is retained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of April, 1939.