

Award No. 354

Docket No. 374

2-GN-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist J. P. Barrett be paid the difference between machinist rate of 86¢ per hour and that of Federal inspector, 93¢ per hour, from September 1, 1938, until again assigned as Federal inspector.

JOINT STATEMENT OF FACTS: On July 1, 1937, J. P. Barrett, holding assignment as night engine inspector, but being then temporarily filling a vacancy in supervisory service, placed bid on bulletin covering vacancy as day Federal inspector at Great Falls roundhouse, and was the senior of the three bidders on such bulletin. Prior to assignment on such bulletin, Barrett was permanently promoted to a supervisory position and remained thereon until August 1, 1938.

Junior bidder Machinist Zunchick was assigned to position of day Federal inspector on bulletin of July 1, 1937, but was laid off in reduction of force October 31, 1937, at which time such position was again bulletined and bid in by Machinist Carter.

On August 1, 1938, Barrett elected to displace Carter when he returned to service under the shop crafts' schedule, after being removed from such supervisory position, and was permitted so to do, but on September 1, 1938, Barrett was removed from the position and Carter replaced thereon, Barrett being assigned as machinist thereafter.

The employes contend that displacement of Carter by Barrett on August 1, 1938, was proper under schedule, Rule 13, and that Barrett should have been continued on such position. The carrier contends that such displacement was improper under schedule, Rule 13, and that the replacement and retention of Carter on such position was a proper application of that rule.

The rate for machinist is 86¢ per hour and the rate for day Federal inspector is 93¢ per hour.

Schedule Rule 13 reads:

“(a) Mechanics in service will be considered for promotion to position as foreman.

When vacancies occur in position of gang foreman, men from the respective crafts, if qualified, will have preference in promotion.”

“(b) An employe promoted to official position will retain his seniority at last point employed as a mechanic and may return to his

It is, therefore, entirely evident that the action on which the Barrett claim is predicated, was disposed of according to the demand of the then representatives of the machinists, and in accordance with their interpretation of schedule Rule 13, prior to any representation of such employes by the Railway Employes' Department, A. F. of L., or the International Association of Machinists, and not only prior to certification of such representation by the Mediation Board, but actually prior to the invocation of the Mediation Board's services.

The carrier submits, therefore, that the present claim is outside of the jurisdiction of this Board, as it is a claim contrary to the negotiated interpretation of the rule covering, contrary to the demand of the representative of the employes at the time of the occurrence, and was a closed subject prior to the present appellant representative having any jurisdiction as such. The carrier denies the right of this Board to reverse an agreement with its employes because of a change of representation thereafter.

The carrier further submits as its Exhibit C-1 a copy of that certain agreement of November 9, 1938, between Great Northern Railway Company and certain organizations, including the Railway Employes' Department, A. F. of L., and the International Association of Machinists, by virtue of which the representation of the crafts named therein was formally transferred to them. Attention is called to the last paragraph thereof, reading:

"It is further agreed that until changed in accordance with the provisions of the Railway Labor Act, as amended, the existing rates of pay and rules governing working conditions will continue in effect, subject thereafter to thirty days notice given to the other by either party desiring a change."

No such notice has been given or received by the carrier.

The carrier submits, therefore, that this claim must be denied for the following reasons:

1. It is contrary to agreed interpretation and application of the schedule rule covering the matter.
2. It is contrary to the original claim and interpretation of the claimant's representative upon which settlement has once been made.
3. It is contrary to the provisions of agreement of November 9, 1938.
4. Reopening of a case once settled with one organization, by another organization, because of later change of representation, is not only improper as a matter of equity, but is fraught with serious dangers, in that any change in representation might then be used retroactively to upset all previous agreements made in good faith by both carrier and employes.

It should, of course, be understood that the carrier is in no way protesting the right of the present representative of the employes to present for adjustment, either to the carrier or to this board, claims or grievances originating prior to November 1, 1938; but it does directly challenge the right of the present representative to upset a settlement already made with the then representative prior to that date.

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.

This particular case was disposed of by the organization, formerly holding the agreement, and the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1939.