

Award No. 420  
Docket No. 424  
2-D&RGW-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 10, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE DENVER AND RIO GRANDE WESTERN  
RAILROAD COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That in placing Mr. L. Burkinshaw at Bond, Colorado, April 14, 1939, as a salaried working foreman and laying off Carman W. C. Hopper, agreement was violated and W. C. Hopper should be reinstated and paid for all time lost.

**JOINT STATEMENT OF FACTS:** Bond, Colorado, is the away from home terminal for the freight train district Denver to Bond, and prior to April 14, 1939, three carmen were employed there on a monthly salary under the provisions of Rule 13 of current agreement. One man protected service requirements from 7:00 A. M. to 7:00 P. M.; one man from 7:00 P. M. to 7:00 A. M.; and the third assignment covered protection of service requirements for a twenty-four hour period, the three carmen employed alternating every third week on the twenty-four hour assignment.

Effective April 14, 1939, Mr. L. Burkinshaw, a furloughed carman from Salt Lake City, Utah, was appointed working foreman, resulting in the displacement of Carman W. C. Hopper, who at that time was the youngest car inspector at Bond.

The organization's claim for reinstatement of Carman W. C. Hopper with pay for time lost was denied by the management.

**POSITION OF EMPLOYEES:** That there is nothing in our agreement that permitted the company to put L. Burkinshaw at Bond as a working foreman and lay Mr. W. C. Hopper off and require Mr. Burkinshaw to do the same work that Mr. Hopper did.

That the company had no right to go to another seniority district and get Mr. L. Burkinshaw, make a working foreman out of him and lay off W. C. Hopper and require Mr. Burkinshaw to do the same work Mr. Hopper did.

When Mr. Hopper went to Bond it was with the understanding that he would stay there for one year unless cut off in reduction of force according to the Memorandum to our agreement effective November 1, 1935, which reads as follows:

"(1) In connection with the application of Rule 18, Seniority, in the Denver Seniority District, because of existing conditions at Bond, Colorado, any employee bidding on a vacancy or new position at Bond

confining his duties strictly to supervision, or when mechanics are not immediately available, and in all cases where the requirements of the service demand. \* \* \*

supports the action of the carrier in establishing the position of working foreman at Bond.

Rule 30 (f) has application only at shop points where it is necessary for the foreman to place one of the mechanics in charge of carrying out the work. It has no application at a small shop point, such as Bond, where there are no gangs to direct and only one mechanic is on duty during each working shift.

The carrier holds there has been no violation of the rules cited by the organization in support of their claim. Mr. Burkinshaw was appointed as working foreman at Bond for the purpose of providing adequate supervision and more efficient service. That we are getting better supervision and more efficient service is indicated by the following statement of the number of A. A. R. repair cards covering repairs made to foreign cars we have received from Bond during the time Mr. Burkinshaw has been foreman at that point compared with the same period last year.

	1939	1938
April	143	27
May	126	35
June	158	65
July	375	42
August	385	47
	<hr/> 1187	<hr/> 216

The appointment of a working foreman on this property has never been governed by seniority. Fitness and ability are the governing factors in their employment. Such positions are not covered by the agreement, and the carrier contends it has the sole right to appoint employes, or even others, of its own selection to straight supervisory or working foreman jobs and to abolish any and all jobs that are not needed. Such right has been recognized by many boards and tribunals. That the organizations have heretofore agreed with this statement and recognized this right is evidenced by the fact that, as heretofore mentioned, no exception was taken or objection made to our establishing the positions of working foremen hereinbefore mentioned, none of whom held seniority on the district to which assigned as foreman.

**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.

Memorandum of agreement between the parties, dated November 1, 1935, reads:

"In connection with the application of Rule 18, Seniority, in the Denver Seniority District, because of existing conditions at Bond, Colorado, any employe bidding on a vacancy or new position at Bond shall have a preference right to such position for a period of one (1) year, and other employes in the Denver District shall not be permitted to exercise their seniority rights in the displacement of such employes at Bond during this period."

The displacement of Carman W. C. Hopper by Working Foreman L. Burkinshaw was in violation of the agreement.

**AWARD**

Claim of the employes sustained.

**NATIONAL RAILROAD ADJUSTMENT BOARD**  
By Order of Second Division

**ATTEST: J. L. Mindling**  
Secretary

Dated at Chicago, Illinois, this 11th day of January, 1940.