

Award No. 429

Docket No. 450

2-GN-BK-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BLACKSMITHS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That blacksmiths' Special Rule No. 5 was violated when Joseph Pschandl, who holds rights as a forging machine operator, was given preference in assignment on differential rate fire over Stephen Tschida, who holds rights as blacksmith. We request that Stephen Tschida be assigned to second heavy fire, and that he be paid seven cents per hour for all time worked since July 24, 1939.

JOINT STATEMENT OF FACTS: On or about July 19, 1939, position of blacksmith on second fire at Dale Street shops was bulletined account promotion of previous incumbent. Bidders on such bulletin were Stephen Tschida, holding a seniority date of June 8, 1936, as blacksmith, and employed as such at a rating of 86¢, and Joseph Pschandl, holding a seniority date of June 1, 1931, as forging machine operator and employed as such at a rating of 86¢. Second fire blacksmith position bulletined is rated at 93¢. The two bidders originally acquired seniority as blacksmiths in 1922 and 1926, respectively, but have lost former seniority dates and reacquired new dates under schedule rules because of extended shop shut downs. Blacksmiths' Special Rule 5, of current schedule for shop craft employees (on file with this Board) reads:

"Seniority lists shall be divided as follows:

Blacksmiths,
Springmakers,
Machine Operators,
Helpers,
Regular Apprentices,
Helper Apprentices."

Joseph Pschandl was assigned under bulletin referred to, on July 24, 1939. Employees claim that Stephen Tschida should have been so assigned.

POSITION OF EMPLOYES: That carrier violated blacksmiths' Special Rule No. 5, which reads:

"Rosters

smiths, there not only were a very limited number of employes, but owing to conditions in 1922, certain such employes were not all-round blacksmiths, but rather were specialists, entirely satisfactory as such and hired as such, but without qualifications to do other kinds of blacksmith work. The differentiation in the rosters was, therefore, introduced to protect such employes against displacement from the specific employment for which they were hired, through reduction in force of employes doing other classes of blacksmith work. At the same time, the employes did not want to bar such employes from promotion or transfer to other work which they might be capable of performing, if vacancies or new positions afforded such opportunity. In the course of time, by deaths and retirements, and the gradual completion of apprenticeships, this condition was somewhat ameliorated, but the method of handling was permitted to continue; that is, exercise of seniority between sub-classes, in the event of vacancies or new positions, but not on force reductions. Incidentally, with the extreme force reductions following 1930, something of the same nature appeared in other crafts, but it was then met, not by a revision of rules or roster differentiation, but by simply disqualifying employes for services which they were unable satisfactorily to perform, and calling back junior men who were qualified, but who had already been cut off. As these later events proved, such method would have been entirely adequate to protect the blacksmith specialists in question in 1926, as they were all near the head of the seniority roster; but that is merely a matter of hindsight being better than foresight. This explanation is not intended as a defense of the carrier's position, but merely explanatory of what occurred.

The carrier's position may be summed up as follows:

1. Its action in this case was exactly in accordance with its previous undertakings with its employes, as shown by the carrier's exhibits.
2. It is agreeable at any time to consider such revision in its agreements as the employes may desire, upon due notice, and in accordance with the requirements of the Railway Labor Act.
3. No such request for a change has been given by the employes.
4. Until such change is properly negotiated, the carrier is not in position to retreat from its previous obligations to its employes.
5. The National Railroad Adjustment Board is without jurisdiction to require such change.
6. Until such change is properly effected, the carrier cannot be penalized for complying with its prior obligations.

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.

Rule 5 of Blacksmiths' Special Rules, provides that seniority list shall be subdivided as follows:

“* * * Blacksmiths, springmakers, machine operators * * *”

Both parties to the dispute agree an employe when changing from one subdivision to another in the craft seniority group, becomes the junior employe in the subdivision to which transferred.

AWARD

Claim of employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of January, 1940.