

Award No. 454
Docket No. 470
2-NYNH&H-EW-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYES: Request that the roster date of W. R. Martin, electrical worker, maintenance of way department, Providence Division, be changed from August 30, 1920, to February 1, 1928.

JOINT STATEMENT OF FACTS: Mr. Martin entered the service as an electrical worker on the then New London Division on August 30, 1920. On January 1, 1928, the New London Division was abolished and the territory which it formerly comprised was divided between the New Haven and Providence Divisions; the Providence Division taking over the territory east of Midway (New London Terminal) and the New Haven Division, the territory west.

Martin, employed at New London, transferred to the New Haven Division on January 1, 1928, and to the Providence Division on February 1, 1928.

POSITION OF EMPLOYES: In presenting this case to the Honorable Board, Second Division, the employees do so reluctantly, inasmuch as the rules of the agreement between The New York, New Haven and Hartford Railroad Company, and its Federated Shop Crafts, effective October 1, 1921, effective October 16, 1921, effective December 1, 1921, under the names representing the company:

"H. C. Oviatt, General Mechanical Superintendent.
W. J. Backs, Engineer, Maintenance of Way.
H. A. Shepard, Superintendent, Electric Telegraph.
H. Gilliam, Superintendent, Electric Transmission.

Approved:

C. L. Bardo, General Manager."

constituted the established practice over a period of years of using the provisions contained in this agreement, to govern the working conditions, seniority rights, payment of overtime, etc., of employees employed as electrical workers in the maintenance of way.

It is our contention that the seniority date of August 30, 1920, on the Providence District seniority roster, at present enjoyed by Electrical Worker W. R. Martin, is contrary to the established practice of using the provisions

which was limited in its application, however, to mechanics' helpers, apprentices and car cleaners employed in the mechanical department and which agreement, with changes from time to time, continued to April 9, 1937.

During the period from July, 1922, to April 9, 1937, there was no agreement in effect covering electrical workers in the maintenance of way department.

Following certification of representation of electrical workers by the International Brotherhood of Electrical Workers by the National Mediation Board in its certification R-198, 203, 209, on December 24, 1935, the shop crafts, including the electrical workers, served notice of a desire to formulate a new agreement and out of the negotiations resulting therefrom, the present agreement, effective April 9, 1937, was adopted.

On January 1, 1928, the New London Division was discontinued, and the territory formerly comprising the New London Division divided between the New Haven and Providence Divisions. The New London Terminal itself was added to the New Haven Division and the territory east of the New London Terminal added to the Providence Division. Still later on other divisional changes were made so that all of the territory comprising the former New London Division is now a part of the Providence Division.

During all of this period from time of his employment, Mr. Martin has been carried on the roster with a date of August 30, 1920, and no protest was ever made as to such date until the early part of May, 1937, or following the effectiveness of the new agreement with the Federated Shop Crafts effective April 9, 1937.

The existing agreement, Rule 28, provides that the seniority rights of employes covered by the agreement in the maintenance of way department (and which includes electrical workers) shall cover the territory of a division engineer and there has therefore been no change in this respect, insofar as the electrical workers in the maintenance of way department were concerned.

The employes are in effect endeavoring to have applied the provisions of present Rule 18. There was, however, no such rule in effect in 1928 or thereafter, until April 9, 1937. The carrier holds that such rule could not be made retroactive in its application, but rather, that a roster date which had been established some seventeen years previous, and continued without change and even a protest, until after the new agreement was formulated should be accepted and should stand as a recognized roster date of the employe involved. As a practical proposition, it would be further observed that with the divisional changes that had been made, all prior to the effective date of the present shop crafts' agreement, Martin is working on exactly the same territory as he was when he started in 1920, and in which same territory he has worked during all of the period of his employment. It would be obviously unfair to him to deprive him of some eight years' rights, and which, on the basis of the present roster, comprising a total of eleven men, would reduce him from the third senior man to the ninth. The carrier declines to be a party to what it regards as an unfair procedure.

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.

Since the work Martin was assigned to perform on the New London Division was divided between the New Haven and the Providence Divisions and

the circumstances surrounding the changes having occurred approximately nine (9) years prior to the effective date of the agreement now in effect, the Division is unable to sustain the employees' claim.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1940.