

Award No. 564

Docket No. 559

2-B&M-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYES: That E. A. Nordine, machinist, Concord, N. H., should be compensated for twelve days' pay at \$6.88 per day, or \$82.56, because Machinist Helper L. T. Jacobs was used as a machinist between January 30 and February 15, 1940.

We further claim that no helper should perform mechanic's work unless he can qualify under the provisions of Rule 47. We contend that "working at the trade" means working as a machinist and not as a helper.

JOINT STATEMENT OF FACTS: An agreement exists between the parties to this dispute which became effective April 1, 1937. Rule 23 of that agreement reads:—

"Transfer of Furloughed Employees

Rule 23. When reducing forces, if men are needed at other points, they will be given preference to transfer with the privilege of returning to home station when force is increased, such transfers to be made without expense to the company, seniority and ability to govern."

In the Fall of 1939, machinists were needed at Concord, N. H., and there were no furloughed machinists at other points who had made application under Rule 23 for work away from their home point. Because of this condition, the local machinists' committee and the shop superintendent both knowing that L. T. Jacobs, then classed as a machinist helper had done considerable machinist's work and was qualified to do the work at Concord, negotiated for his promotion to position of machinist.

Somewhat later, E. A. Nordine, who had been working two or three years at Concord as a laborer, was found to have had considerable experience as a machinist before entering the service as a laborer in 1937, and he also was given work as a machinist.

When the roster was posted as of January 1, 1940, it showed the names of Jacobs and Nordine as machinists from October 24, 1939 and November 1, 1939, respectively. No exceptions were taken to the way these names were shown on the seniority roster by the local committee who had been a party to both men being given machinists' work.

Rule 47 of the agreement of April 1, 1937, reads as follows:—

"Any man who has served an apprenticeship or has had four (4) years' experience at the machinists' trade and who, by his skill and

When it became necessary to reduce force of machinists on or about February 1, 1940, the local committee asked the shop superintendent to take Jacobs off instead of Nordine. The shop superintendent referred the matter to supervisor of schedules who told him in substance to follow the seniority principle of Rule 21 in making reduction, which was done, but when Nordine was furloughed as a machinist, he was offered work as machinist helper, in which grade there was a vacancy, which work he declined to accept, so part of the loss sustained was due to Nordine's own action.

Grievance sheet was made out dated February 6, 1940. General chairman advanced case to supervisor of schedules, February 14, 1940. Shop superintendent was notified February 14, 1940, to substitute Nordine for Jacobs, latter to resume helper's rating, change was made effective February 16, 1940.

Members of the Board might ask why, if we were to recognize Nordine as a senior machinist to Jacobs on or about February 14, 1940, we did not so recognize him at time of force reduction February 1, 1940. A very natural question; and our explanation is:

1. That we have not changed our opinion that when there is an agreed upon understanding between representatives of the employes and the management, it should be carried out in good faith by both sides, even if it may later be found to technically violate the letter of some part of some rule. There was an agreement between local committee and shop superintendent to promote Jacobs to machinist. There was no proviso at time of Jacobs' promotion about Jacobs' being able to produce documentary evidence of four years' experience as a machinist.
2. That when shop superintendent made known to supervisor of schedules that local committee had reversed themselves and desired to have Nordine considered senior to Jacobs in force reduction under Rule 21, the supervisor of schedules believed to follow seniority as shown by published and unprotested rosters was the proper course, and that the general committee would sustain such action if it reached them, so he instructed shop superintendent to follow that course;
3. That when a time claim developed and the general committee indicated that they considered the time claim had merit, the supervisor of schedules, within a reasonable time, instructed the shop superintendent to give the machinist's job to Nordine and restore Jacobs to the rank of machinist helper, rather than have a growing claim for compensation, when it made no difference to the management which man was given the work.

We urge that the Board consider the handling reasonable and decline to pay Mr. Nordine the twelve days' pay claimed.

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.

There is no agreement in effect providing for "setting up" of helpers, i. e., promoting or advancing helpers to positions of mechanics either temporarily or permanently.

If such an agreement is made it must be made by the same representative authorities that negotiated the Schedule of Rules.

Mechanics may, of course, be employed as such under the provisions of the agreement but when so employed seniority as mechanics starts as per the provisions of the agreement.

AWARD

If Jacobs and/or Nordine qualify, under the provisions of Rule 47, as a machinist, they will be retained as such and hold seniority as a machinist from the day they went to work as a machinist. If they do not qualify under Rule 47, they will be removed from machinists' classification of work and from the machinists' seniority roster.

Claim for compensation for Nordine is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of February, 1941.