

Award No. 587

Docket No. 612

2-DL&W-EW-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 78, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**THE DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That Rule 27 of the current agreement was violated on June 8, 1940. Maintenance of Way and Structures Department.

EMPLOYEES' STATEMENT OF FACTS: On June 8, 1940, Hugo Brand regularly employed as an electrician helper and holding seniority as such on the traction substation roster was assigned to and performed mechanics' work, (operating high tension substation at Summit, New Jersey) worked eight hours and was paid mechanics' rate of pay of 90¢ per hour, a total of \$7.20.

POSITION OF EMPLOYEES: Rule 27—Assignment of work—reads in part as follows:

“None but mechanics regularly employed as such shall do mechanics' work as per special rules of each craft, except foremen at points where no mechanics are employed.”

It is the position of the employees that management is without the right under the terms of the above quoted rule to assign electrician helpers to perform mechanics' work at point in question. It is not conceded that management has any justification under Rule 41 of the current agreement to assign helpers to perform mechanics' work for one or two days and then return to their former position as helper, or that this is promoting helpers in the meaning or intent of the rule. Rule 41 reads as follows:

Helpers will be promoted to the positions of mechanics, seniority and ability to govern, and helpers promoted will be selected by the local management in conjunction with the duly authorized local committee.

The employees wish to call to the attention of your Honorable Board that this matter was handled in a similar case and presented to your Board for review and decision, better known as Docket No. 398. This question was settled on the property; your Board notified to withdraw same. Award No. 396 was issued. The agreement or understanding reached was that if it was deemed necessary to promote helpers to positions of mechanics, the maintenance of way department would be canvassed and if there is a furloughed mechanic or mechanics they would be placed on such positions in compliance with Rule 25, instead of promoting helpers.

In the present claim the carrier did not have sufficient time to communicate with Mr. Creegan and assure itself that he would be at work on the morning of June 8. The letter of November 1, 1939 (Exhibit B) clearly covers this situation. It states "if furloughed mechanics in this department are available that they will be placed on these positions instead of promoting helpers." The carrier submits that a furloughed employe in Boston is not available for work at the Summit, New Jersey, substation, especially when the carrier cannot give notice until late in the afternoon preceding the day such employe has to be on the job. When a furloughed employe is not available, the letter of November 1, 1939 (Exhibit B) specifically provides that helpers are to be promoted. Such promotion would be subject to the written agreements of April 13, 1937 and February 3, 1938 protecting the helpers seniority status as a helper.

Carrier therefore submits that it has violated no agreement with employes and has strictly complied with all the terms of the settlement of November 1, 1939, since in the instant case there was insufficient time in which to notify Mr. Creegan and have him available for work.

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 27 reads in part as follows:

"Rule 27. None but mechanics regularly employed as such shall do mechanics' work as per special rules of each Craft, except Foremen at points where no mechanics are employed. * * *"

However, Rule 41 in the same agreement makes the following provision:

"Rule 41. Helpers will be promoted to the positions of mechanics, seniority and ability to govern, and helpers promoted will be selected by the local management in conjunction with the duly authorized local committee."

The facts of record in the instant case do not show that the local management and local committee agreed to the selection and promotion of Helper Hugo Brand in the instance referred to.

It would seem that no difficulty should be encountered in carrying out the provisions of Rule 41 provided that local management and local committee join in the selection of helpers to be promoted as required by this rule.

AWARD

Claim to be disposed of in accordance with the last paragraph of the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1941.