

Award No. 604

Docket No. 558

2-WP-FT-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 117, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FEDERATED TRADES)**

THE WESTERN PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That J. J. Douglas, blacksmith; D. Moffitt, blacksmith helper; and three boilermaker helpers, namely, P. Rossi, A. J. Kaufman, and P. R. Fluallen, be compensated for all time lost from June 30, 1939, subsequent to correction of the violation.

EMPLOYES' STATEMENT OF FACTS: The employes named in the above statement of claims were cut off in reduction of force June 30, 1939 (See Exhibit 2 and 3) and employes with less seniority were retained in the service. As the result of conference held August 23, 1939, between the management and the representatives of the employes the claimants were given proper seniority dates and were permitted to exercise their prerogative in displacing the junior employes. (See Exhibit 29)

The service records of the claimants and of the junior employes with the amount involved in each of the claims is as follows:

J. J. Douglas, Blacksmith, entered the service of the Company at
Wendover, Utah 8- 4-1924
Cut off in reduction of force 3-23-1938
Reemployed as Blacksmith at the Sacramento Shops 2- 1-1939
Cut off in reduction of force 6-30-1939
Temporarily employed at Oroville 8-3-1939 to 9- 2-1939
Returned to his former position at Sacramento Shops 9- 5-1939

Based on the number of days that J. J. Douglas could have worked (had he not been improperly cut off on June 30, 1939) during period June 30, 1939 to August 2, 1939 the total amount of his claim for wages lost is \$172.83.

D. Moffitt entered the service of the company at the Sacramento shops; his service record is as follows:

Laborer 8- 1-1936 to 7-20-1937
Carmen Helper 7-20-1937 to 10- 7-1937
Blacksmith Helper 10- 7-1937
Cut off in reduction of force 1- 6-1938
Reemployed as Carmen Helper 5-11-1938
Cut off in reduction of force 7-27-1938
Reemployed as Blacksmith Helper 1-11-1939
Cut off in reduction of force 6-30-1939
Returned to service 8-26-1939

Submitted herewith marked carrier's Exhibit B is copy of letter jointly signed by general chairmen of the boilermakers, blacksmiths and machinists setting forth the re-arrangement of forces as agreed to.

Carrier contends:

(1) Under the provisions of Schedule Rule 27, in the absence of any agreed to interpretation to the contrary, an employe may possess seniority date only in one craft at one point and such seniority does not accord to him any priority right over another employe in any other craft or at any other point.

(2) Prior to the dispute here involved, the employes, by silence at least, have acquiesced in the interpretation set forth in (1).

(3) The agreement as reached in conference of August 23, 1939 has no retroactive effect. This contention is in conformity with your Award No. 298, Docket No. 319.

(4) Interpretations of the railroad administration and various tribunals, including your Board, carrier feels, sustains its interpretation.

There is no justification under the provisions of the schedule or established by past practice to warrant payment of this claim.

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.

This claim involves the application of the following rules:

"Rule 25. When reducing forces, if men are needed at any other point, they will be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Railroad. Seniority to govern all cases.

Rule 27. Seniority of employes in each craft, covered by this agreement, shall be confined to the point employed in any department.

Rule 23. When it becomes necessary to reduce expenses, the hours may be reduced to forty (40) per week before reducing the force. When the force is reduced, seniority as per Rule 27 will govern, the men affected to take the rate of the job to which they are assigned.
* * *

The employes enumerated in the claim were given employment at Sacramento in accordance with the provisions of Rule 25, and were still employed at the latter point on June 30, 1939, while men subsequently employed were retained in the service when the reduction was made.

There is evidence of lack of understanding as to the application of Rule 27 when the employes involved were laid off. However, the carrier was given notice on June 27, 1939, of the employes' position and contention that the men laid off were senior to some of those retained in the service, and this notice was given the carrier three days prior to the date the reduction in force became effective. The record further shows that on August 23, 1939, the carrier agreed to the interpretation of Rule 27 as contended by the employes' representatives.

When the men involved in this dispute entered the service at Sacramento, they accumulated seniority at that point from the date they entered the service and, consequently, the provisions of Rule 23 were not complied with when the reduction in force was made at Sacramento on June 30, 1939.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1941.