

Award No. 624

Docket No. 621

2-Va-MA-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE VIRGINIAN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Mr. E. F. Rogers was the senior furloughed machinist helper in the Princeton shops between the dates of June 9, 1938, and February 7, 1939, and that Machinist Helper Rogers was furloughed effective Friday morning 7:30, June 10, 1938, and remained the senior furloughed machinist helper until February 7, 1939, and we claim that Mr. Rogers should be compensated for all machinist helper's work that was performed by C. H. Byrd, a pipe and tin shop helper, while Rogers was the senior furloughed machinist helper between the dates of June 9, 1938, and February 7, 1939.

EMPLOYEES' STATEMENT OF FACTS: Mr. E. F. Rogers was employed by the Virginian Railway Company as a machinist helper on September 8, 1924 and assigned to machinist helper's work and that Rogers was furloughed by a bulletin signed by Mr. F. S. Tinder, shop superintendent for the Virginian Railway Company at Princeton, W. Va., effective Friday morning 7:30 June 10, 1938, and that Rogers remained the senior furloughed machinist helper until February 7, 1939. And that management transferred a pipe and tin shop helper from the pipe and tin shop to the machine shop on the morning of June 10, 1938 and assigned this pipe and tin shop helper to machinist helper's work in the machine shop on this same morning upon which Machinist Helper Rogers' furlough became effective, and Management continued to require this pipe and tin shop helper to perform machinist helper's work regardless of our protest during this entire period from June 9, 1938 to February 7, 1939, when Mr. Rogers was on furlough and was the senior furloughed machinist helper at the Princeton shops.

We offer and attached and shown as exhibit (A) an affidavit from Mr. E. F. Rogers in which he states under oath that he was the senior furloughed machinist helper in the Virginian Railway Company's shops at Princeton, W. Va., from June 9, 1938 to February 7, 1939, and that management did transfer C. H. Byrd a pipe and tin shop helper from the pipe and tin shop to the machine shop and assign this pipe and tin shop helper to machinist helper's work and that he continued to perform machinist helper's work during the entire time that Rogers was the senior furloughed machinist helper from June 9, 1938 to February 7, 1939.

And we present an affidavit from the herein-mentioned pipe and tin shop helper C. H. Byrd which we attach and show as Exhibit (B) in which Mr. Byrd states under oath that he who is a pipe and tin shop helper was transferred from the pipe and tin shop on the morning of June 10, 1938 to the

to recognize this committee. However, it appears that the Supreme Court decided the issue of representation before his name was dropped and that the Company did, in fact, meet his committee in conference June 11, that is, several weeks before his name was actually dropped."

The carrier submits that Rogers and his authorized representative, not having protested the change in Byrd's classification and seniority between January 1, 1925 and June 9, 1938, nor having taken exception to Byrd displacing Rogers as a machinist helper at the time Rogers was displaced, nor having filed claim for all machinist helper's work performed by Byrd between June 9, 1938 and February 7, 1939 until after the Board's Award 342, Docket 354 dated June 7, 1939, ratified the change that was made in Byrd's classification and seniority. Rogers should not now be permitted to claim that Byrd, exercising seniority as a machinist helper which resulted in the displacement of Rogers, acted in violation of the agreement and entitles Rogers to the compensation 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.

Byrd's seniority is that of a pipe and tin shop helper. He does not possess any seniority rights as a machinist helper. Byrd's ouster of Rogers was necessarily irregular.

AWARD

Rogers to be paid compensation for all machinist helper's work performed by Byrd from June 9, 1938, to February 7, 1939.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of June, 1941.