

Award No. 887
Docket No. 842
2-D&RGW-MA-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE DENVER AND RIO GRANDE WESTERN
RAILROAD COMPANY**

(Wilson McCarthy and Henry Swan, Trustees)

DISPUTE: CLAIM OF EMPLOYEES:

1. That on and since May 18, 1942, the carrier has persisted in violating provisions of the controlling agreement and supplement thereto, dated April 27, 1942, by:

(a) The arbitrary assignment of Junior Machinist P. H. Clark as a Diesel electric maintainer.

(b) The refusal to assign thereto Senior Machinist O. O. Shaw.

2. That in consideration of the aforesaid violations, the carrier be ordered to:

(a) Assign Machinist O. O. Shaw to said job, and

(b) Compensate him for any and all wage losses suffered retroactive to and including May 18, 1942.

EMPLOYEES' STATEMENT OF FACTS: At Grand Junction, Colorado, on May 8, 1942, the carrier posted Bulletin No. 9, advising that bids would be received for one (1) Diesel electric maintainer machinist enroute between Grand Junction, Colorado and Denver, Colorado, at a monthly rate of \$250.00.

Machinist applicants bidding therefor together with their Grand Junction seniority standing follow:

Names	Seniority Date:
O. O. Shaw	Oct. 19, 1922
Harvey Parker	March 7, 1923
Frank Robberson	Aug. 25, 1923
C. A. Hanchett	July 3, 1934
P. H. Clark	Dec. 21, 1936

On May 18, 1942, the carrier posted a notice advising that Machinist P. H. Clark was awarded the position as Diesel electric maintainer. Mr. Clark was formerly roundhouse foreman, from which position he resigned recently.

The carrier has declined to grant the claimant his rights to said position although he has been selected and qualified as the relief maintainer.

tions, and as result of this interview and examination, Machinist P. H. Clark was placed in the position of maintainer at Grand Junction under the provisions of Bulletin No. 9, and Machinist O. O. Shaw (Grand Junction) was placed in the position of relief maintainer under the provisions of Bulletin No. 11. As result of this action the instant claim was presented.

The employees do not state in their claim which rule of the current agreement or what portion of the agreement effective April 27, 1942 was violated in placing Machinist P. H. Clark in the position of regular Diesel electric maintainer, and the carrier insists there was no rule or agreement violated. On the contrary paragraph 4 of the Memorandum of Agreement of April 27, 1942 makes specific provisions for qualifying machinists and electricians for extra and relief, and Machinist Shaw was assigned as extra maintainer in order to properly qualify as a regular when a vacancy arose.

It was, as heretofore stated, specifically agreed with the two organizations involved during negotiations preceding the agreement of April 27, 1942, that the maintainers would be selected on the basis of their qualifications and under the provisions of Rule 15 (d) of the agreement.

Very few of our machinists have the qualifications to perform work on Diesel electric locomotives and Machinist Clark was regularly assigned as a maintainer for the reason in the interview with and the oral examination given by the Diesel supervisor, he proved to be fully qualified for the work and Mr. Shaw was not fully qualified.

The carrier contends in this case it violated no rule or settlement in assigning Mr. Clark to the position of Diesel electric maintainer, and further contends its action in doing so is supported by the provisions of Rule 15 (d) of the current agreement, and by Paragraph 4 of the Memorandum of Agreement of April 27, 1942.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The memorandum of agreement for filling positions designated as traveling Diesel electric maintainers provides that positions will be bulletined in accordance with Rule 15 to the electricians and machinists.

One bulletin was issued on May 8, 1942, for position of one machinist traveling Diesel electric maintainer and another bulletin was issued on the same date for two machinists and one electrician relief traveling Diesel electric maintainers. Under the first bulletin O. O. Shaw bid on this position, but it was assigned to P. H. Clark, a junior machinist. O. O. Shaw bid upon and was assigned to the position of relief maintainer. Shaw and Clark were recognized as competent traveling Diesel electric maintainers at the same time, and Shaw, being senior to Clark, should have been assigned to the preferential position.

AWARD

Claim of the employees sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of February, 1943.