

Award No. 980

Docket No. 919

2-TC-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 68, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

TENNESSEE CENTRAL RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the carrier be ordered to bulletin and fill the new job created in the air brake triple valve room at Nashville, Tennessee, in accordance with the controlling agreement and Rule 13 thereof.

EMPLOYEES' STATEMENT OF FACTS: At Nashville, Tennessee, the carrier has maintained, in the shop, space where triple valves are repaired and tested for both passenger and freight car equipment.

Carman W. C. Staley has continuously performed this work for years, for which he has received the standard minimum rate of pay established for carmen other than freight carmen.

The triple valve work increased to the extent that about December 1, 1941, the carrier assigned Carman J. L. Williams to repairing and testing triple valves and he has since regularly performed this work for five (5) or more hours daily, six days a week.

The rate of pay for carmen is 95 cents per hour, except for freight carmen, and their rate is 88 cents per hour.

Since December 27, 1941, to date, the carrier has declined to bulletin this newly created job.

The controlling agreement is dated effective October 1, 1922.

POSITION OF EMPLOYEES: We quote herein Rule 13 of our agreement:

Rule 13. When new jobs are created or vacancies occur in the respective crafts or shops, same will be bulletined for five (5) days and the oldest bidders in the point of service, shall, if sufficient ability is shown by trial, be given preference in filling such jobs or any vacancy that may be desirable to them, unless the management and the committee agree that senior bidders are not qualified.

Employees desiring to avail themselves of this rule will make application in writing to the official in charge and copy of application to be given to local representative.

It was called to the committee's attention that the majority of Carman Williams' working time was devoted to car inspection work and that there was more reason, according to their contention, for bulletining an additional job of car inspector than for bulletining an additional job of air brake mechanic. The committee answered that air brake work was the more highly specialized of these two branches of the trade, and while the carrier does not agree with this, even assuming it to be true, such a circumstance would not provide grounds for bulletining an additional mechanic's job in the air brake shop.

Obviously for the purpose of putting the carrier on notice as to his intentions in event the instant request were not complied with, a paragraph included in a letter written by Mr. Harry Gambill, chairman of carmen, to Mr. J. A. Crunk, master mechanic, under date of August 5, 1942, is quoted below:

"If, for any reason, the job of Mr. W. C. Staley should become vacant, permanently or temporarily, we will ask that the senior man desiring the vacancy be assigned to it as per Rule 13, and will insist that he be given the same training as has been given Mr. Williams in order to properly qualify for the job."

In the first place, the use of Carman Williams to fill in for a part of his time in the air brake shop was not for the purpose of affording him any training in this type of work. As result of his experience as an employe of this company since 1915 as oiler, car repairer helper, car repairer and car inspector, he was already possessed of sufficient knowledge of air brake work to qualify him. It could not be expected that all mechanics in the employ of the carrier as such are qualified in certain branches of the trade and this condition was recognized by the parties when Rule 13 was negotiated in providing for trial to test ability, unless management and committee agree that senior bidders are not qualified. The rule provides that question of qualification comes after advertisement and receipt of bids. The committee cannot unilaterally add to the rule. Suffice it to say that if and when the position of the regularly assigned air brake mechanic (Staley) should become vacant, it will be filled in accordance with the governing rule of the agreement then in effect.

As the carrier sees it, the only question before your Board is whether, under the rules of the agreement, the fluctuating work in the air brake shop over and above that performed by the assigned air brake mechanic, and which is cared for by the intermittent and/or part-time use of a regularly assigned mechanic of the carmen's craft, constitutes the creation of a "new job" of air brake mechanic. Neither Rule 13 nor any other rule of the agreement defines a "new job." When, therefore, is a new job of air brake mechanic created? The carrier submits that the only logical answer to the question is—when the work becomes sufficient in volume as to require substantially the full time of an additional mechanic in the air brake shop. Until such volume is reached, a new job of air brake mechanic does not exist and there is nothing to advertise.

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 waived right of appearance at hearing thereon.

It is not clear, from the employes' statement of claim, whether, through their request that the new job be bulletined, they are seeking the establishment of an additional full-time position in the air brake triple valve room, or merely the assignment of such extra work as is actually being performed there to the senior qualified carman.

The evidence of record does not justify an order that an additional full-time position be established in the air brake triple valve room, but it supports the conclusion that the extra work actually being performed there is sufficiently regular and advantageous to entitle the senior qualified carman to be assigned to it.

. AWARD

The proceeding is remanded to the parties to effectuate the above findings through such means as they may agree upon.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 3rd day of November, 1943.