

Award No. 1064

Docket No. 983

2-NS-MA-'45

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Richard F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 28, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

NORFOLK SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That within the meaning of the controlling agreement, the carrier unjustly dealt with Leading Machinist F. O. Goodwin, when he was displaced as such by chief mechanical inspector on January 1, 1944, chief mechanical inspector being cut back to machinist on that date.

(b) That the carrier be ordered to restore Machinist F. O. Goodwin as leading machinist on the second shift and additionally compensate him for all time worked by former Chief Mechanical Inspector E. H. Roy, on the basis of 5 cents per hour, retroactive to January 1, 1944.

EMPLOYEES' STATEMENT OF FACTS: At Raleigh, North Carolina, the carrier maintains a second shift from 7:00 P. M. to 3:00 A. M., and a force on that shift of a leading machinist, machinist, two machinist helpers, boiler-maker and helper, boiler washer, laborer, engine watchman, hostler and helper, two fire builders. In addition to performing the regular work of machinist, the leading machinist directs the work and is under the jurisdiction of the master mechanic.

Prior to October 1, 1942, Machinist Edward H. Roy was regularly employed on this shift as a leading machinist and he was paid a differential of 5 cents per hour above the basic machinists' rate. However, effective October 1, 1942, Mr. Roy was appointed chief mechanical inspector. This vacancy was bulletined, bid in by Machinist F. O. Goodwin, and on September 29, 1942, he was advised by the master mechanic that his application for leading machinist at night had been accepted. Leading Machinist Goodwin continued on this position until January 1, 1944, when he was displaced by former Chief Mechanical Inspector Roy, and Goodwin was assigned to the day shift as a machinist at a reduction in pay of 5 cents per hour.

This displacement was protested before it was made effective, and the claim that Goodwin be restored as a leading machinist and reimbursed for the wage loss suffered has been declined by the carrier.

The controlling agreement is dated effective July 1, 1936.

POSITION OF EMPLOYEES: It is respectfully submitted that the controlling agreement dated effective July 1, 1936, was made and has been maintained in pursuance of the Amended Railway Act, approved June 21, 1934.

"Mechanics in service will be considered for promotion to positions of foremen. When vacancies occur in positions of gang foremen, men for the respective crafts will have preference in promotion."

Notwithstanding the omission of any assurance of seniority rights to such employes, nevertheless all the instances cited above occurred during the life of that agreement and prior to the current agreement of July 1, 1936. The fact that Rule 15 was changed when the current agreement was drawn up so as to protect the seniority rights of mechanics who are promoted, is convincing evidence that the matter received special consideration at the time the current contract was negotiated, and that it was the desire and intent to protect the seniority rights of such employes. Likewise, the omission of any clause in the current agreement to the contrary is convincing evidence that the past practice of allowing such employes to exercise their seniority was approved by the employes. Certainly, there is not one iota of evidence that such past practice was objectionable.

SUMMARY

The carrier denies the allegation that it unjustly dealt with Leading Machinist F. O. Goodwin when he was displaced as such by former Chief Mechanical Inspector E. H. Roy, and contends that it was the carrier's unequivocal right, as evidenced by past practice over a period of years, to place any qualified person it chose in the position of leading machinist and/or to remove him therefrom. The carrier respectfully suggests that this one point alone is sufficient to warrant your Honorable Board's denial of the employes' claim. Further, we submit that the employee's failure to comply with the provisions of Rule 29 with respect to the filing of grievances and/or appeals annulled any claim they might otherwise have had. Finally, if there is any question of the exercise of seniority rights involved, Mr. Roy ranks No. 1 in seniority in the machinists craft at Raleigh, and his exercise of that seniority in accordance with past practice would have entitled him to his choice of positions in his craft.

In view of the foregoing, the carrier respectfully requests that the claim of the employes be denied in its entirety.

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.

On October 1, 1942, leading Machinist, E. H. Roy was promoted to chief mechanical inspector, an official position similar to that of foreman.

On December 16, 1943, the management notified Mr. Roy that it was releasing him of his duties as chief mechanical inspector and returning him to his former position as leading machinist. The position of leading machinist being filled at that time by the claimant, who bid in the position.

Carrier argues that the promotion or demotion of a man to or from the position of leading man is strictly a managerial function. We have no fault to find with that statement, but it is not the question that confronts us in this case.

The carrier argues that the grievance was not properly filed. With this we cannot agree as the company was notified of the position of the employes before the change was made. The question before us is whether, under the

current agreement, Roy, after his removal from the position of chief mechanical inspector, has a right to take the job away from claimant who bid it in.

A similar question was submitted to the United States Railroad Labor Board in Decision No. 895. That Board held contrary to the position of the carrier in this case. There is no rule in the current agreement that justifies the position taken by the carrier. This division was confronted with a similar question in Award 809.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of May, 1945.