

Award No. 1267  
Docket No. 1168  
2-D&RGW-FO-'48

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

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

**DISPUTE: CLAIM OF EMPLOYEES:** That the carrier be ordered to allow Fireman and Oiler V. E. Southam to exercise displacement rights in the group from which transferred, under the terms of the current collective agreement.

**EMPLOYEE'S STATEMENT OF FACTS:** The carrier's personal employment record at Salt Lake City, Utah, of Fireman and Oiler V. E. Southam, hereinafter referred to as the claimant, follows:

**Personal Employment Record**

September 15, 1941—Transferred to Coal Chute Operator  
September 17, 1941—Transferred to Laborer  
April 19, 1942) —Coal Chute Operator  
April 24, 1942) —Coal Chute Operator  
May 20, 1942) —Coal Chute Operator  
June 2, 1942 —Transferred to Laborer  
April 2, 1943 —Transferred to Machinist Helper  
July 1, 1944 —Leave of absence for Helper  
August 4, 1944 —Transferred to Fire Cleaner  
August 29, 1946 —Transferred to Machine Labor

After having regularly employed this claimant in the power plant as a fire cleaner for over two years, the carrier elected to abolish his job as such, and thereupon, effective August 29, 1946, reclassified him from a fire cleaner in the power plant at the rate of 93½ cents per hour to that of a laborer in the power plant at 81½ cents per hour, a reduction of 12 cents per hour or 96 cents per day.

The claimant immediately attempted to exercise his displacement rights to a position in the group from which transferred, and the carrier then and since has declined to adjust this dispute.

The collective agreement, effective March 1, 1938, is controlling.

**POSITION OF EMPLOYEES:** It is submitted that the claimant was transferred or promoted for a period of over two years, from the rank and pay

(D) In classification groups (A) and (B) of Rule 1, new positions and vacancies will be bulletined for a period of five (5) days and assigned to the senior qualified bidder at the expiration of bulletin, except that temporary vacancies are not to be bulletined until the expiration of thirty (30) days from date such vacancy occurs. The appointment will be made within five (5) days following expiration of bulletin period. Copy of application will also be filed with the Chairman of the Local Committee by the applicant. In filling new positions or vacancies ability and seniority will govern; ability being sufficient, seniority shall prevail.

(E) Employees declining promotion shall not lose their seniority except to the employees promoted and only in the next higher rank of service.

(F) An employee awarded a bulletined position and failing to qualify within thirty (30) days may displace the junior employee in his seniority group.

(G) Employees laid off in reduction of force desiring to retain their seniority rights, will file their address in writing with their employing officer (receipt of which will be acknowledged), and will renew their address in writing each ninety (90) days thereafter. Failure to file address in writing when laid off or to renew same in writing each ninety (90) days, or failure to report for duty within seven (7) days from date notified (by mail or telegram sent to the address last given) or give satisfactory reason for not doing so, will constitute forfeiture of all seniority rights."

With respect to this rule, the carrier holds that in the case at hand it was not violated. Although Mr. Southam was paid the machinist helpers' rate of pay from April 2, 1943, to August 4, 1944, he was never transferred or promoted to the position of machinist helper. Neither did he ever perform any of the duties of a machinist helper. Furthermore, Mr. Southam was never transferred or promoted to the position of fire cleaner. Neither did he perform the duties of a fire cleaner. Not having been promoted to the position of fire cleaner by bulletin and not having performed any of the duties of this position, there being no such position in existence in the power plant at Salt Lake City, it was of course not possible to abolish the job, consequently Mr. Southam, when paid his correct laborers' rate on August 29, 1946, had no displacement rights to exercise.

The carrier contends in this case that the work Mr. Southam is now performing at the power plant at Salt Lake City is the same work he performed prior to and during the period he was paid the rate of pay of a machinist helper and a fire cleaner.

The carrier also contends that simply because Mr. Southam was paid a rate higher than the laborers' rate during the war emergency, a rate that was not negotiated to cover power plant laborers, he is not entitled to exercise any displacement rights when he reverted to his correct rate of pay with the ceasing of the war emergency, and the claim therefore should be denied.

**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.

Claimant was never actually transferred or promoted to a Class "A" position within the intent and pursuant to the provisions of Rule 12(b) of the parties' current agreement. Consequently, he acquired no rights thereunder.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling,  
Secretary.

Dated at Chicago, Illinois, this 19th day of July, 1948.