

Award No. 1522
Docket No. 1430
2-NYNH&H-MA-'52

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 17, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)

THE NEW YORK, NEW HAVEN AND HARTFORD
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the applicable rules of agreements the carrier unjustly withheld restoring Walter E. Downing to his former position as a welder in the Closed Rostered Welders' Pool on and since June 10, 1949.

2. That accordingly the carrier be ordered to restore this employe to his former Pool Welders' job with compensation for all time lost retroactive to 8:00 A. M., on the aforesaid date.

EMPLOYEES' STATEMENT OF FACTS: Machinist Welder W. E. Downing, hereinafter referred to as the claimant, was employed by the carrier at the Southampton Street engine house, Boston, Massachusetts, as a pool welder with a seniority date of December 29, 1931 on the closed roster welders' pool, and he remained in the service as such until January 8, 1943, when he was granted a leave of absence to accept the position accorded to him by the International Association of Machinists as the general chairman of the machinists' craft in the employ of the carrier.

The claimant continued on leave of absence as general chairman of the machinists until April 15, 1949, but at that time he was detained from resuming his position as a welder in the closed roster welders' pool because he had incurred a fracture to his left leg, and who was not found able to perform all his duties as a welder by Doctor Edward A. Hogan until June 9, 1949. However, when the claimant informed the general foreman on this date that he was reporting for work the next day at 8:00 A. M., Friday, June 10, 1949, he was advised by this officer that, "You have no job."

This dispute has been handled with officers of the carrier from the bottom to the top in accordance with the applicable rules of the agreements between the carrier and System Federation No. 17, as revised effective September 1, 1949, with the result that the highest designated carrier officer has declined on several occasions to adjust it or engage in negotiations for an agreed to statement of facts with the view in mind of jointly referring the dispute to the National Railroad Adjustment Board, Second Division, for determination.

POSITION OF EMPLOYEES: It is submitted that no known issue has ever been raised on the property by the carrier, either on or off the record during the handling of this dispute regarding the claimant's rights as a welder in

Action in this case was appealed by the machinists' committee and submitted herewith and identified as exhibit C, is attached copy of former Vice President Doolan's letter of September 8, 1949, to Acting General Chairman of the machinists.

Mr. Bradt disagreed with this decision and on September 15, 1949, announced his intention of submitting the case to the Second Division. I wrote him on September 26, 1949.

On January 5, 1950, the case was discussed with the full Executive Committee of System Federation No. 17. At that time, it was understood that effort would be made to find work for Downing, as it was stated that he was down and out financially, until such time as there was work as a welder to which Downing's seniority status as a closed roster welder would entitle him. Except for an informal discussion in Chicago on April 5, 1950, with Acting General Chairman Donnellan, who had succeeded Mr. Bradt following the latter's replacement of Mr. Downing, the case has remained in the same status except that in accordance with the understanding of January 5, 1950, temporary work has been found for Mr. Downing. A period of over a year has elapsed since the case was last handled on the property and June 18, 1951, the date of submission of the case to the Second Division by Mr. Fox, President of the Railway Employees' Department. Since Item 2 of the claim is for compensation from June 10, 1949, the Second Division will consider the significance of such delay.

In summary:

- (1) that Downing's standing on the closed welders' roster is not such as to entitle him to work in that capacity and that except as an additional job were created, compliance with Item 1 of the claim would require that Downing be permitted to displace a man senior to him on the roster.
- (2) that a job which the machinists claimed was also claimed by the boilermakers and awarded to the latter.
- (3) that it is the carrier's understanding that with the possible exception of the machinists, the Executive Committee of System Federation No. 17 considered that no injustice had been done Downing.
- (4) that if the machinists were sincere in their belief in the merits of Downing's claim, they would not have allowed it to have remained dormant for over a year from the time it was last discussed.
- (5) that in holding the case for over a year from the time of the last handling on the property before submitting to the Second Division is significant as representing the understanding as to the status on the property and that a claim for pay including such period is so manifestly unreasonable as to hardly make comment necessary.

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.

There is no dispute here about Claimant Downing's seniority date of December 29, 1931, on the so-called closed roster for welders. The only question to be resolved is whether the claimant was unjustly denied employment on June 10, 1949, on which date he sought return to work following a leave of absence which began January 8, 1943, and terminated April 15, 1949.

Both parties cite Rule 28(c), the provisions of which were agreed to effective June 13, 1944, and incorporated into the controlling agreement July 1, 1945.

The provisions of Rule 28(c) are obviously intended to preserve for rostered welders, under the conditions stipulated therein, prior rights to the performance of such welding work as was recognized as belonging to rostered welders when the rule was negotiated. It is axiomatic, therefore, if such welding work was absorbed by craft welders during the time claimant was on leave, and to the extent alleged by the employes, then the conclusion must be that the claimant has been unjustly deprived of employment. On the other hand, if the situation in which the claimant found himself on June 10, 1949, was brought about solely through force reductions as asserted by the carrier, then there is no cause for complaint.

The facts of record do not permit the Division from this distance to intelligently rule on this question. It is of the opinion of the Division, however, that the parties through a joint check can determine to what extent, if any, craft welders are now performing welding work to the exclusion of rostered welders, and if the findings in this respect are such as to justify returning the claimant to service on a regular position, the Division directs that this be done.

AWARD

Claim remanded for disposition by the parties in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 21st day of February, 1952.