

Award No. 1946
Docket No. 1810
2-SP (T&NO)-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Mortimer Stone when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 162, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

**SOUTHERN PACIFIC LINES IN TEXAS & LOUISIANA
(Texas & New Orleans Railroad Company)**

DISPUTE: CLAIM OF EMPLOYES:

1. That under the current agreement it was improper for the Carrier to assign L. L. Clark to the position of Traveling Mechanic (Machinist).
2. That Machinist D. E. Leeper be assigned to the position of Traveling Mechanic (Machinist) and be paid the difference between what he earned in the Maintenance of Way Shop and the rate of \$406.04 per month retroactive to March 26, 1953.

EMPLOYES' STATEMENT OF FACTS: Machinist D. E. Leeper, hereinafter referred to as the claimant, is employed by the Texas & New Orleans Railroad Company, hereinafter referred to as the carrier, as a motor car repairman in the maintenance of way repair shop, Houston, Texas, with a seniority date as such as of July 16, 1949. A copy of the seniority roster dated January 1, 1954, is submitted herewith and identified as Exhibit 1.

On March 19, 1953, the carrier's general foreman, J. E. Weatherly, posted Vacancy Bulletin No. 13, copy submitted herewith and identified as Exhibit 2, advertising a traveling mechanic (machinist) position on the Houston Division, with headquarters at Houston, Texas, covering inspection and maintenance of motor cars, roadway machines and automotive equipment.

The claimant bid on the job covered by Vacancy Bulletin No. 13, Exhibit 2, by filling out the vacancy application, copy submitted herewith and identified as Exhibit 3.

Mr. L. L. Clark, a water service mechanic, under date of March 23, 1953, wrote a letter to the carrier's water service supervisor, G. W. Brown, making application for the position advertised in Bulletin No. 13, Exhibit 2. A copy of Mr. Clark's application is submitted herewith and identified as Exhibit 4.

claimant therefore had no contractual basis for claiming this position under Vacancy Bulletin No. 13. Since none of the applicants for this vacancy had any seniority as a traveling mechanic (machinist) on the Houston Division, the carrier was free, under the working agreement, to assign Mr. L. L. Clark, a qualified machinist, to such position.

This honorable Board is respectfully requested to recognize the prior interpretations on this property of Rules 29, 51 and 52, and the precedents established by the Second Division, NRAB, in awards hereinabove cited, and deny this claim.

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

The carrier and 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.

This claim is to require assignment of Claimant Leeper to position of traveling mechanic covered by vacancy bulletin No. 13 to which L. L. Clark was assigned on March 26, 1953, and for claimant's loss of earnings resulting from such assignment.

For many years there have existed six separate seniority districts for carrier's machinists at Houston. Claimant Leeper held seniority as Machinist, occupation motor car repairman, maintenance of way repair shop in the department of the chief engineer under supervision of the supervisor of Maintenance of Way and Scales. Another seniority district was that of Motor Car Mechanics, Houston Division, such as existed on each of the six operating divisions of the railroad, under supervision of the Division Superintendent. Claimant held no seniority therein, and the two men whose names appeared on the roster were assigned to the two positions then existing. Their work formerly was that of keeping track motor cars in good condition in the field, but with increased use of automobiles and trucks the field servicing of automotive equipment took much of their time and the title designation of the position was changed to that of "Traveling Mechanics".

The position here in dispute was to fill a vacancy as "Traveling Mechanic" and was so identified on the vacancy bulletin. Claimant bid for the position but it was given to Clark who made application without claim of seniority right.

The organization asserts that claimant had bidding right by virtue of agreement made in 1950 following creation of two machinists' positions to do maintenance work on road machines in the field, over the entire system, under the supervisor of maintenance of way equipment and scales and the chief engineer. It was agreed therein that vacancies in those positions "or new jobs similar to the two existing jobs that may be hereafter created, will be bulletined to the seniority roster of machinists, Maintenance of Way Shop at Houston, and will be filled by applicants from that roster if qualified."

The position here demanded by claimant was not a vacancy "in those positions",—both of which are and have long been filled; it is not a "new job" but rather the filling of a vacancy in the long existing separate seniority district of Traveling Mechanics; nor in essential respects is it a job similar to the two jobs referred to in the 1950 agreement. It requires work largely on automotive equipment while those related to work on roadway machines; its work is limited to the Houston division while those ranged over the entire system, and it is under different supervision and control,—it is under super-

vision of the Division Superintendent, while they are under supervision of the supervisor of Maintenance of Way and Scales.

Employees do not challenge the qualifications or ability of Clark who was assigned to the vacancy and claimant had no bidding rights thereto.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 3rd day of June, 1955.

DISSENT OF LABOR MEMBERS TO AWARD NO. 1946.

The majority erred in Award No. 1946, for the following reasons:

1. The Memorandum of Agreement of August 9, 1950, is controlling and it was so recognized by the carrier when it posted the position involved in this dispute by bulletin for bids at the Houston Maintenance of Way Shop, in accordance with said agreement, and, after the closing time of bulletin the carrier failed to place the senior qualified machinist who bid on the vacancy and who is the claimant (O. E. Leeper) in this dispute, on the position.

2. L. L. Clark held no employment relations with this carrier in the machinists' craft. Therefor he was not eligible to bid on said position.

3. The majority contend that the August 9, 1950 Agreement established a new system wide seniority district for the two positions so created, whereas actually in under the provisions of the agreement the two employes holding these positions have seniority only at Houston Maintenance of Way Shop and are on no other seniority roster—thus, the majority are erroneously writing a new seniority rule. The authority to do this, the Division does not possess under the Railway Labor Act.

For the above reasons we dissent.

R. W. Blake
Charles E. Goodlin
T. E. Losey
Edward W. Wiesner
George Wright