

Award No. 2426
Docket No. 2490
2-DS-TWUofA-'57

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION
OF AMERICA, AFL-CIO**

DONORA SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That it is in violation of the agreement, Article 10-(a), paragraph 3, when Mr. Albert Metzner, a junior employe was promoted before Mr. Michael Fugich a senior employe. That on May 4, 1956, Mr. Fugich and not Mr. Metzner should have been promoted to First Class Car Repairman and paid the wage of the First Class Car Repairman. That under the present agreement Mr. Fugich was entitled to the promotion on May 4, 1956.

EMPLOYEES' STATEMENT OF FACTS: That Mr. Michael Fugich is an employe of the Donora Southern Railroad Company and on May 4, 1956 was working as a second class car repairman.

That Mr. Fugich was the senior employe on the property on May 4, 1956 and was entitled to the promotion to first class car repairman.

That instead Mr. Metzner a junior employe had been promoted that day and paid the first class car repairmen's rate of pay.

That this was in violation of the agreement, Article 10-(a), paragraph 3.

That the Railroad Division, Transport Workers Union of America, AFL-CIO has a collective bargaining agreement, effective August 29, 1949 and revised September 1, 1955 with the Donora Southern Railroad Company, covering the employes of the Maintenance of Equipment Department, a copy of which is on file with the Board and is by reference hereto, made a part of these statement of facts.

POSITION OF EMPLOYEES: That in the promotion of employes the senior employes will be given first consideration.

This consideration was not given to Mr. Fugich.

That since this was not done in the case of Mr. Fugich, but a junior employe was promoted that Mr. Fugich be compensated the rate of first class car repairman as was the junior employe.

That to support this claim Article 10-(a), paragraph 3, is being quoted and it reads as follows:

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.

In assigning Class II employes in lieu of Class I to perform the work involved in this dispute, the carrier acknowledges such action was not proper under the rules of the controlling agreement. The claim instituted by the senior Class I employe was accordingly paid.

The record shows and it was affirmed by the parties at the hearing that the use of junior employe from Class II to fill a vacancy in Class I when a senior employe in Class II is available is improper.

The petitioning organization also contended that even though the Class II employe should not have been used in the instant case, under the circumstances he nevertheless was damaged and the claim should be allowed. The carrier has already paid twice for the work performed. The instant claim for pay is not valid.

AWARD

Claim disposed of as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 5th day of April, 1957.