

Award No. 2920

Docket No. 2686

2-T&P-MA-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee James P. Kiernan when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 121, RAILWAY EMPLOYES'
DEPARTMENT, AFL (Machinists)**

TEXAS AND PACIFIC RAILWAY COMPANY

**TEXAS PACIFIC-MISSOURI PACIFIC TERMINAL RAILROAD
OF NEW ORLEANS**

DISPUTE: CLAIM OF EMPLOYES:

1. That at Marshall, Texas the carrier violated Rule 37 when they refused Machinist A. B. O'Connor his rights to displace Machinist E. E. Cayard, Sr. after having abolished O'Connor's job.

2. That the carrier be ordered to comply with the provisions of the rule and that O'Connor be permitted to displace Cayard as he had requested.

EMPLOYEES' STATEMENT OF FACTS: Machinist A. B. O'Connor's job in Reclamation Plant was abolished on February 25, 1957. He made written request to displace Machinist E. E. Cayard, Sr., off of lathe job in machine shop, mechanical department. He was not allowed displacement rights as provided for under Rule 37 of our current agreement and is presently performing other jobs in the machine shop assigned to him by his foreman. The seniority rosters in the reclamation plant and the mechanical department were consolidated as of May 15, 1948 and the mechanics of the respective crafts, including the machinists, hold common seniority therein.

An identical case and claim was handled on this same property in 1941 and the contentions of the employees were sustained by this Division without the assistance of a referee, (see Award No. 714—Docket No. 731, National Railroad Adjustment Board, Second Division.

The agreement, effective September 1, 1949, as subsequently amended, is controlling.

(b) At points or on shifts where no inspector is assigned and machinists are required to inspect engines and swear to Federal reports, they will be paid six cents (6¢) per hour above the machinists' minimum rate for performing work as classified in Rule 39-a, at the point employed for the days on which such inspections are made.

(c) Autogenous welders shall receive six cents (6¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at the point employed.

(d) Diemakers and toolmakers shall receive eight and four-tenths cents (8.4¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at the point employed.

(e) Locomotive valve setter (classified repairs) shall receive eight and four-tenths cents (8.4¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at the point employed.

(f) Laying out shoes and wedges (classified repairs) shall receive eight and four-tenths cents (8.4¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at the point employed.

(g) Driving axle and crank pin lathes shall receive six cents (6¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at point employed.

(h) Locomotive inspectors not required to make Federal Affidavit shall receive two and four-tenths cents (2.4¢) per hour above the minimum rate paid mechanics performing work as classified in Rule 39-a, at the point employed.

It is understood that these employees receiving differentials are assigned to the above work."

The carrier incorporates here by reference its submission in Docket 1758, resulting in Award 1904 by the Second Division of the National Railroad Adjustment Board, and requests the Board to dismiss or deny this claim because neither the agreement nor the Railway Labor Act furnishes any basis for sustaining it.

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 employees 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.

On September 10, 1956, Bulletin No. 10 was posted reading as follows:

"Bids will be received in this office, closing 12:00 Noon on September 15th, 1956, on the following position—

One (1) Machinist in the Machine Shop.

Hours of assignment 7 A.M. to 12 Noon 1 P.M. to 4 P.M. Mondays thru Fridays, rest days on Saturdays and Sundays.

Vacancy—

Rate of pay above position—2.1780"

Machinist Cayard was assigned and held the assignment until he was displaced by claimant. Claimant wrote the following letter to M. A. O'Connor, Tool Supervisor, and to Leo Schols, Chairman shop committee:

"This is to advise that due to my position being abolished in the Reclamation Plant as per bulletin expiring this date, I wish to place myself on position now occupied by Machinist E. E. Cayard, in accordance with my seniority."

Claimant was so assigned and Cayard exercised his seniority by placing himself on a temporary vacancy in the same shop. Cayard now holds a temporary assignment and claimant holds the permanent assignment formerly held by Cayard, by reason of Cayard's successful bid on Bulletin No. 10.

Bulletin No. 10 was a request for bids for "Machinist in Machine Shop" nothing more. We are unable to find that claimant was or is entitled to any special machinist work by reason of holding an assignment advertised in Bulletin No. 10.

The Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans filed a separate submission requesting they be dismissed for the reason they do not operate at Marshall, Texas, and have no employees subject to the jurisdiction of this Board at Marshall, Texas. Claimant did not challenge or offer any rebuttal to this statement.

AWARD

Texas Pacific-Missouri Pacific Terminal Railroad of New Orleans is dismissed from this proceeding.

Claim against the Texas and Pacific Railway Company denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of July, 1958.

DISSENT OF LABOR MEMBERS TO AWARD NO. 2920.

This Division interpreted Rule 37 of the current agreement with Memorandum being a part of said rule in Award No. 714 made without the assistance of a referee, when we said:

"Under the provisions of Memorandum of Agreement dated April 16, 1940, amending Rule 37, employees whose assignments are disturbed may place themselves in line with their seniority.

S. D. Young's assignment was disturbed and he should have been permitted to place himself on position of his choice under this Memorandum of Agreement."

Award No. 2920 is in error since the agreement requires the carrier to grant the request of Machinist O'Connor to place himself on a position of his choice when his assignment is disturbed.

/s/ James B. Zink

/s/ R. W. Blake

/s/ Charles E. Goodlin

/s/ T. E. Losey

/s/ Edward W. Wiesner