

(Advance copy. The usual printed copies will be sent later.)

rm 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 6328
Docket No. 5942
2-UP-MA-'72

The Second Division consisted of the regular members and in addition Referee Robert G. Williams when award was rendered.

Parties to Dispute: (System Federation No. 105, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Machinists)
(
(Union Pacific Railroad Company

Dispute: Claim of Employees:

1. That under the current agreements road Machinist Rex Burleson, formerly Superintendent of Road Equipment on Kansas Division, should not have been allowed to displace road Machinist C. W. Saunders, Laramie, Wyoming, who was not the junior mechanic.
2. That accordingly the Carrier be ordered to compensate road Machinist C. W. Saunders the difference between the rate paid to a monthly assigned road Machinist and the hourly rate paid a shop Machinist plus travel time of two hours each day for commuting from Laramie, Wyoming to Cheyenne, Wyoming, plus cost of noon lunch, and also automobile allowance for use of his personal car for commuting from Laramie, Wyoming to Cheyenne, Wyoming and return each working day.
3. That the Carrier be ordered to additionally compensate Machinist John Eickbush for expenses involved when he was forced to go to Green River as a result of Mr. Rex Burleson's illegal exercise of seniority rights in accordance with the existing agreements.

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.

Parties to said dispute waived right of appearance at hearing thereon.

The Carrier's Superintendent of Work Equipment in this case voluntarily resigned to return to work as a road machinist. He displaced the Claimant who was not the junior mechanic in his seniority area.

The Claimant contends that the former Superintendent should have displaced the most junior mechanic in the seniority area. To support his position the Claimant cites Ruling No. 7 which interprets Rule 18 of the September 1, 1949 Schedule of Rules. Ruling No. 7 provides that a foreman who voluntarily gives up his position "can only exercise his seniority on position occupied by (a) junior mechanic." The Carrier, on the other hand, relies on Rule 18 of the September 1, 1949 Schedule of Rules which provides that "Employees accepting positions as foreman . . . shall retain their seniority as mechanics . . . where they last held seniority rights." The Carrier also contends that Ruling No. 7 applies only to the Motive Power & Machinery Department and not to the Maintenance of Way Department. This case turns on whether Ruling No. 7 applies to the circumstances in this dispute.

The agreement of September 1, 1949 is "between the Union Pacific Railroad Company and all that class of employees represented by System Federation No. 105 Railway Employees' Department A.F. of L." There is no indication that the agreement is between a class of employees and a Department of the Carrier. Rule 18 of the Agreement, therefore, applies to all employees in a covered class, regardless of the Department to which they are assigned. Ruling No. 7 is an interpretation of Rule 18 and this interpretation was agreed upon by representatives of the Carrier and employees. It would be inconsistent with the basic agreement to give Rule 18 one interpretation in the Motive Power & Machinery Department and another in the Maintenance of Way Department. Employees doing the same or similar work would be operating under different agreements depending on the Department in which they are assigned. To introduce separate Departmental interpretations of agreement provisions would tend to fractionalize agreements with long histories of generally accepted practices. This Board, therefore, must sustain this claim. In sustaining this claim, this Board does not express any finding on whether Carrier and Organization representatives may establish a ruling that effects or changes contract rights. This question was not presented to this Board.

The Carrier has asserted that most of the Rulings including Ruling No. 7 were restricted to the Motive Power and Machinery Department. It cites the fact that the title to the Rulings show they were made in the Motive Power & Machinery Department and involved disputes in this Department. The mere fact that problems arose in this area does not show the parties intended one Rule 18 in the Motive Power & Machinery Department and another Rule 18 in the Maintenance of Way Department.

The Claimant shall be compensated the difference between the rate paid a monthly assigned road machinist and the hourly rate paid a shop machinist plus travel expenses during the time of this continuing violation.