

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

INTERNATIONAL ASSOCIATION OF MACHINISTS

O. G. SHAFFER, MACHINIST
RAILWAY EXPRESS AGENCY

DISPUTE: CLAIM OF EMPLOYEES.—That on December 19, 1934, position was filled in violation of Rule 30 and that O. G. Shaffer, mechanic, should be compensated for all time lost between December 19, 1934, and May 17, 1935.

POSITION OF EMPLOYEES.—O. G. Shaffer's position is that if his bid had been accepted, he would have secured the position as of December 19, 1934; consequently, there would have been no vacancy on March 24, 1935, and he would have continued in service until such time as he had requested leave of absence.

When Mr. Grose was assigned to the above position on December 19, 1934, it carried with it a title of "foreman", but in reality he acted as a working foreman; consequently, the job should have been bulletined. His duties consisted of the performance of mechanic's work.

Rule No. 30 provides that none other than mechanics or apprentices regularly employed shall do mechanic's work, except at points where no mechanics are employed. At this point it will be noted that there are a number of mechanics employed.

Compensation is asked for O. G. Shaffer until May 17, 1935, due to the fact that on this date he requested, and was granted, ninety (90) days' leave of absence. Mr. Shaffer requested this leave of absence due to the fact that he had been working as spare man, getting only odd time.

Under date of July 12, 1935, the company agreed that a mistake had been made and was willing to make adjustment in pay for time lost, commencing December 19, 1934, but could not come to an agreement as to when such pay should stop, the company taking the position that the pay should stop as of March 24, 1935, upon which date Mr. W. B. Grose was promoted to the position of assistant supervisor, his former position being filled by A. J. Schmitt, who had seniority as of September 14, 1926.

POSITION OF CARRIER.—First, that the Second Division of the Adjustment Board does not have jurisdiction in this case.

Second, as far as this particular case is concerned and without admitting your Division's authority to rule upon it for reasons previously made abundantly clear, I would say that for many years at Pittsburgh the position of foreman has been regarded as excepted and not subject to bulletin and bid. This practice was never protested by the organization until the case culminating in this complaint.

The management after consideration of the facts and circumstances concluded that in view of the language of Rule 30, we would henceforth treat this position as subject to bulletin and bid and have done so since March 24, 1935.

It then developed that Shaffer demanded reparation, and while we did not believe he was entitled to same under the situation, we offered to compromise the case and pay him up to March 24, 1935, the latter being the date upon which an employee senior to himself was appointed. By no stretch of imagination could Shaffer have secured this position, even though it had been bulletined on that date, since a senior man was placed upon it.

The organization declined to accept this and demanded reparation to May 17, 1935, when Shaffer requested and was granted a leave of absence.

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