

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS
FORT DODGE, DES MOINES & SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Seniority rights of Electrical Helpers, Sam Huffman and George Bienz.

JOINT STATEMENT OF FACTS.—The petitioners entered into an agreement June 1, 1922, covering wages and working conditions of electrical workers employed in maintaining, rebuilding, and inspection of all electrical work in sub-stations and elsewhere, except at Boone Shops, and shall include bonders. Such agreement provides in Rule 10:

“The Company shall prepare on January 1st of each year a list showing seniority standing of all electricians employed on the railroad and shall post such list at all points where electricians are employed.

“An employe who believes his standing is incorrectly stated on seniority list must file written protest with the company and the committee within sixty (60) days from date of seniority list or no attention will be given to his protest.

“When new jobs are created or permanent vacancies occur, the oldest electrician in point of service shall, if competent, be given preference in filling such new jobs or vacancies.

“A vacancy of less than thirty days shall be considered a temporary vacancy and may be filled without regard to seniority.”

Under this agreement the company established and worked one gang of electricians out of Boone and one gang out of Fort Dodge. The size of these gangs varies with the season but the work of each gang is generally steady.

The company under this agreement also worked a bonding gang out of Boone. The work of the bonders was and is very intermittent and erratic due to finances of the company.

In 1925, in order to have a regular method of supplying men for relief work in sub-station operator's position, the following agreement was made and entered into.

At a meeting between the company and the committee from the International Brotherhood of Electrical Workers, held on July 28, 1925, the following agreement relative to the handling of relief sub-station work was agreed upon, subject to approval of the International Brotherhood of Electrical Workers:

“1st. It shall be understood that so far as possible all relief sub-station operating shall be done by the senior helper in the substation maintenance gang. That by reason of such relief operating service the senior helper in the sub-station maintenance gang, if he has been performing the relief operating service, shall be entitled to the first vacancy occurring for a regular assigned sub-station operator.

2nd. That whenever the bonding crew is not regularly working, the bonding crew foreman shall be called to fill the helper's position in the sub-station maintenance gang at helper's rate of pay, or second relief operator during such time the regular assigned helper may be doing relief sub-station operating. This not to apply if the bonding crew is working regularly.

3rd. That when the regular sub-station maintenance gang helper is assigned to a regular sub-station operator's position, the bonding car foreman shall be given preference when permanently filling such position of helper in the sub-station maintenance gang.

4th. In case the helper in the sub-station maintenance gang who has been performing the relief sub-station work does not care to accept a vacancy for a regular sub-station operator, such vacancy shall then be offered to the foreman of the bonding crew.

5th. That electricians in the sub-station maintenance gang shall not be called to do relief sub-station operating unless the helper in said gang is not available, and then only in case of actual emergency, which is understood to be on account of sickness or death, or other good and sufficient cause, but requests for leave of absence by sub-station operators simply for their own personal convenience shall not be construed to be an emergency case within the meaning of this agreement."

"The above method of handling the relief sub-station operating shall be followed out until such time as same may be changed by a mutual agreement between the company and representatives of the International Brotherhood of Electrical Workers."

George Bienz entered the service of the company December 8, 1926, as electrician's helper, at Fort Dodge, and, while laid off from time to time during slack times, never came to Boone to work with Boone gang until December 4, 1935.

Sam Huffman entered the service of the company December 21, 1926, as electrician's helper, and worked on the bonding car, also as bonding car foreman, relief sub-station operator, regular sub-station operator and electrician's helper.

In December, 1935, the Fort Dodge crew of electricians was reduced and Bienz was laid off.

He came to Boone and sought to displace Huffman as electrician's helper. A controversy arose as to his right to do so, and conferences were held between the company and the organization, and the company ruled on March 3, 1936, as follows:

"With reference to the meeting of your committee with me November 13, 1935, when the question of seniority rights of Helpers Huffman and Bienz was discussed:

"We have given careful consideration to the case and have reached the conclusion that, as Bienz's seniority dates from December 8, 1926, while Huffman's dates from December 21, 1926, Bienz is the senior of the two and therefore has the right to displace Huffman if he desires.

"Should he decide to do this, he should arrange details with the superintendent in the usual way."

The organization protests this ruling, and the case is hereby submitted to the Board for decision.

POSITION OF EMPLOYEES.—We protest the ruling of the company in this case because:

Our interpretation of the agreement of July 28, 1925, is that to become the senior helper an employe must first work on the bonding car and become foreman as the helper before Huffman did. And if the senior helper should step up to a regular sub-station operator, then the bonding car foreman should be given preference when permanently filling such position of helper in the sub-station maintenance gang. This is in accordance with Article 3 of the agreement.

Huffman started to work on December 22, 1926, as helper on the bonding car and worked at that position for several months, and then was set up to bonding car foreman, and worked in this position and as senior helper and as relief sub-station operator until about the middle of January, 1930, when he was assigned to a regular sub-station operator's position. He took his steps of advancement as they came, although it was not compulsory to take a sub-station job unless he desired.

He was displaced as a regular sub-station operator in August, 1931, because of a curtailment of forces and placed himself back on the maintenance gang as senior helper. He has been laid off at different times and called back according to his seniority rights. In a period of over nine years that he has worked for the company, he has been laid off and put back on as stated above, and this is the first time there has been any question about seniority rights.

Mr. Bienz has been working with the Fort Dodge gang, has never worked on the bonding car and he has had layoffs but has never come to Boone to work on any jobs until December 4, 1935, when he displaced Huffman as helper. Therefore, we don't see where Bienz has any claim to seniority rights on the sub-station maintenance gang, according to the agreement.

POSITION OF CARRIER.—The controversy arises because an employe who has worked on the Fort Dodge gang for several years, seeks to displace a younger employe on the Boone gang.

The company contends that system seniority prevails. That the oldest man in point of service is entitled to preference over a younger man regardless of location of the work. That there is no dispute as to the date the two men

entered the service. That the fact that the older man in service did not choose to exercise his seniority for several years, has no bearing on his present or future right to exercise same. That there is but one class of helpers and in that class there is but one senior helper as determined by the date of entering service. That the fact that a younger helper accepted promotion does not by that act make him the senior helper. That the ruling made was in accordance with accepted practice throughout the country, and the company believes its ruling should be sustained.

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.

The agreement of the electrical maintainers and bonders dated June 16, 1923, does not provide for the seniority of helpers. However, the supplemental agreement dated July 28, 1925, relative to the handling of relief sub-station work refers to seniority of helpers. The aforementioned agreements are not clear.

AWARD

The subject matter of the claim is remanded to the management and employes' committee for further negotiation.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 20th day of May, 1936.