

NATIONAL RAILROAD ADJUSTMENT BOARD

Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (CARMEN)  
MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—That L. L. Richardson, carman, seniority date November 16, 1925, be compensated for all time lost, account being furloughed while O. E. Smith, a junior carman, seniority date February 1, 1930, was retained in service.

POSITION OF EMPLOYEES.—Effective February 18, 1935, force reduction of three carmen was made at Monroe, La., displacing the following employees:

G. H. Thomas  
L. L. Richardson  
O. E. Smith

Account of O. E. Smith occupying position of wrecking engineer, his displacement through reduction necessitated bulletining his position under Rule 13 (a). The following employees applied for the vacancy:

G. H. Thomas, seniority date August 17, 1925.  
L. L. Richardson, seniority date November 16, 1925.  
O. E. Smith, seniority date February 1, 1930.

On or about February 20, 1935, G. H. Thomas withdrew his bid verbally to Car Foreman Bourne and Master Mechanic Roquemore.

On February 25, 1935, Car Foreman Bourne awarded position to O. E. Smith. The following rules are cited:

"RULE 13

*"Filling Vacancies or New Positions*

"(a) New jobs created and vacancies in the respective crafts will be bulletined and the oldest employes in point of service shall, if sufficient ability is shown by fair trial, be given preference in filling."

"(g) An employe exercising his seniority rights under this rule will do so without expense to the railroad: if after a fair trial of not to exceed thirty days he fails to qualify for the new position, he may return to his former position."

"RULE 21

*"Reduction of Forces*

"(a) When the force is reduced, seniority as per Rule 25 will govern; the men affected to take the rate of the job to which they are assigned."

"RULE 25

*"Seniority*

"(a) Seniority of employes in each craft covered by this agreement shall be confined to the point and seniority sub-division employed."

"(c) Separate seniority list will be compiled by the shop superintendent and/or master mechanic as of January first and July first of each year for each craft and seniority sub-division thereof as listed hereunder."

## "RULE 118

*"Wrecking Crews"*

"(a) Regularly assigned wrecking crews will be composed of carmen and helpers, where sufficient men are available and will be paid for such service under Rule 7, except that the proper officer may select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen."

Account of Carman Smith being the junior employe as covered under Sub-division No. 6 (all other carmen) and holding position of wrecker engineer, Missouri Pacific Railroad, in compliance with Rule 13 (a) and (g) of current wage agreement, bulletined his position.

In accordance with Rule 13 (a) and (g), as above quoted, the senior applicant, L. L. Richardson, should have been assigned, but on February 25, Missouri Pacific Railroad awarded position to O. E. Smith, the junior applicant.

Any reference to Rule 118 (a), as quoted, has only the intent to give the "proper officer" the right to select wrecking engineers from any class of mechanics in service giving preference to mechanics employed as carmen. Giving preference to carmen means that if any carman available is competent to act as wrecker engineer the company would be bound to select them to fill the vacancy.

It will be further noted that this is in selecting someone to fill a vacancy, and none of the language of the rule could properly be construed to apply in any way to reduction in force.

Preference is given to carmen in filling such positions because of the fact that the wrecker engineers are carried on the carmen's seniority roster, as per Rule 25, Sub-division No. 6, and perform carmen's work when not engaged in wrecking service.

In 1930, when Master Mechanic Roquemore found it necessary to secure the services of a new wrecking engineer, he offered the position to Carman L. L. Richardson; the latter declined the appointment, owing to the fact that he was at the time carried in the airmen's sub-division, and by accepting the wrecker engineer job he would have to transfer into the wrecker engineer's sub-division, which, after thirty days, would cause him to lose his seniority as airman.

Reference is made to opportunity extended Carman Richardson to demonstrate his ability to perform duties required of position of wrecker engineer. Our position is that Carman Richardson was willing to demonstrate his ability and at no time contended that the Missouri Pacific Railroad should teach him the mechanics of wrecker engineer. He only contended for the right of assignment under Rule 13 (a) and (g), and had he been accorded that right then he would have been in a position to demonstrate his ability by fair trial.

In view of the facts stated herein, we contend that Carman L. L. Richardson should be compensated for all time lost, as a result of this violation, and that said violation should be discontinued if still existing.

**POSITION OF CARRIER.**—February 18, 1935, a reduction in force was made in our car department at Monroe, La., affecting three carmen. Notice of this reduction was posted on bulletin board for information of the employes on February 13, 1935. This reduction affected the position of wrecking engineer held by junior carman, Mr. O. E. Smith, seniority dating February 1, 1930. The position of wrecking engineer was bulletined simultaneously with the effective date of the force reduction, i. e., February 18, 1935. Application for the vacancy of wrecking engineer was made by G. H. Thomas, seniority date August 17, 1925; L. L. Richardson, seniority date November 16, 1925; O. E. Smith, seniority date February 1, 1930. O. E. Smith was assigned to the position. Selection was made in conformity with Rule 118 (a) of wage agreement.

Summarized, position of carrier is as follows:

- (a) The carrier has the undeniable right under Rule 118 to select wrecking engineers.
- (b) The selection may be made from any class of mechanics in service, giving preference to mechanics employed as carmen.
- (c) The selection was made from the carmen.

(d) The carrier denies the employees' contention that Rule 13 has any direct reference to the question at issue in this case other than the bulletining of a vacancy.

(e) That where applicants are from the carmen's class they shall be given preference over mechanics of other classifications in filling the vacancy, which was done in this instance.

(f) Mr. Richardson was requested to qualify himself for position of wrecking engineer; and that division staff officers would assist him in performing his work. This he failed to do.

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

The carrier or carriers and the employer or employees involved in this dispute are respectively carrier and employee 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.

Rule 118 of the agreement now in effect allows the carrier latitude in the selection of wrecking derrick engineers, but this rule makes no provision to exclude wrecking derrick engineers from the other rules of the agreement.

#### AWARD

(a) Wrecking derrick engineers, when not engaged in wrecking service, shall be governed by the general and special rules applying to all other carmen, including seniority rules.

(b) Protection of the service during a reduction in force which may cause the wrecking derrick engineers to be furloughed, is a subject matter of negotiation between the interested parties.

(c) Carman L. L. Richardson shall be afforded an opportunity "by fair trial" to qualify as wrecking derrick engineer at Monroe, La.

(d) Claim for time lost is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: J. L. MINDLING  
*Secretary*

Dated at Chicago, Illinois, this 21st day of May, 1936.