

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 140, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)

THE COLORADO AND SOUTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—That C. J. Snyder, Trinidad, Colorado, be placed on as mill machine operator and locomotive carpenter and be compensated for the difference in wages earned by Mr. Stough, who was wrongfully placed on the job.

EMPLOYEES' STATEMENT OF FACTS.—On August 1, 1934, C. J. Snyder was working as steam derrick craneman and freight car carpenter at Trinidad, Colorado, and a temporary vacancy existed as A. A. M. operator and locomotive carpenter, due to the sickness of one Mr. Delaney. C. J. Snyder, previous to this time, had filled vacancy, last being June 11, 12, 13, 14, 15, 1934.

October 10, 1934, this position became a permanent vacancy due to the death of Mr. Delaney. Mr. C. J. Snyder, by reason of his seniority, was entitled to the position, both temporarily and permanently, but due to the arbitrary change in seniority list, as will be shown by exhibits, bulletin No. 37, issued under date of October 29, 1934, deprived Mr. Snyder of having his bid recognized as the management, by revised list of 1934, showed him in the car department group; therefore, no recognition was made of his request, but a junior employe (who was not even shown as carpenter, but carried as laborer) was assigned.

POSITION OF EMPLOYEES.—It is our position that Mr. Snyder was entitled to the position of mill machine operator and locomotive carpenter on August 1, 1934, and offer our Exhibit B-1, "Seniority Lists", in proof thereof.

It is noted that seniority lists issued prior to the revised list, bearing date of July 1 and not posted until October 1, 1934, always carried these men on the same list and same grouping; therefore, this list cannot be used in evidence as pertaining to this case inasmuch as the dispute arose on August 1, prior to any knowledge of the employes that a revision had been made.

Our contention is further borne out by the fact that Mr. Snyder filled this position satisfactorily on June 11, 12, 13, 14, and 15, and was recognized by the carrier at that time as being entitled to it and qualified for it.

You will note in the correspondence that the carrier lay stress on the revised seniority list, which classifies only one employe under the title A. A. M. operator; however, this revision of roster had been vigorously protested by the employes' committee and naturally in the spirit of fairness should have been corrected to comply with the previous rosters for the preceding twelve years.

However, no denial has been made to Mr. Snyder's seniority as it appears since 1927 and a casual glance at the 1929 seniority list will convince you that both Mr. Snyder and Mr. Stough are carried under the heading of "Mill" while the 1934 groups all of these employes in accordance with their service period on the one list.

We refer you to Exhibit G-2 in order to show that Mr. Snyder had been carried on the A. A. M. operator and locomotive carpenter list for twelve years prior to the change in roster.

No distinction has been made to this change and if seniority is to govern in promotion and to fill vacancies certainly our position is correct as Mr. Snyder is not only senior to Stough, but had previously qualified and served in the capacity of mill machine operator and locomotive carpenter previous to August 1.

On October 29, 1934, this position was bulletined as a permanent position, which bulletin we are presenting under Exhibit A-2 to show that under the revised seniority list no one was entitled to bid on same; therefore, the bulletin was null and void before being posted, if their contention is correct. The method used in this bulletin was protested.

that roster and revise the roster in accordance with the instructions and the rule. This he did and posted a corrected roster on July 18, 1934.

It will be seen that the employes carried under the caption "MILL" were a miscellaneous group of men except that C. J. Snyder and R. T. Stough were freight car builders assigned as crane engineer and wreckingmaster whenever the wrecking crane was used.

The employes contend that because C. J. Snyder was carried with this group of miscellaneous men under "Mill", he should have been entitled to the vacancy created by the death of Dan Delaney. We have shown that Mr. Snyder was assigned as a freight car builder at Trinidad on August 27, 1922, and his letter of January 21, 1929, also states that he was assigned as a freight car builder. Therefore, he had no seniority as a woodworking machinist or locomotive carpenter. Simply because the seniority rosters had been erroneously made out did not give him seniority in a craft where he had not performed any work whatever except in one or two emergency cases when he worked 8 hours in October, 1929, and 32 hours in June, 1934 (shown in Exhibit A). Exhibit A shows that from August 1922 to November 1934 C. J. Snyder had never been employed in any other capacity except that of freight car carpenter and steam derrick cranemen with the exception of the two brief emergency periods when he worked the position of woodworking machinist-locomotive carpenter. This in itself is positive proof that he only held seniority as a freight car builder under Rule 14 of the schedule and had no rights whatsoever to bid or claim a vacancy in another department, and for this reason his claim should be denied.

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 were given due notice of hearing thereon.

The very last seniority roster published just prior to the filling of the vacancy created through the demise of employe Delaney does not show any separation, by departments, of employes in the car department at Trinidad. This fact as well as the manner of assigning car department employes, over a period of years, at the point involved, proves that all these men enjoyed common seniority.

The facts are that there was extreme laxity over a long period of years on the part of both parties to this dispute in respect to having a seniority roster made up in accordance with the rules of agreement, and regularly posted; further, there is no evidence of any protest being made in connection with these irregularities until the instant case arose, and even then this case was not handled and processed in accordance with the rules of agreement, and apparently laid dormant for more than one and one-half years. Considering all this the Second Division is not inclined to recognize the claim for compensation for wage loss, but does find, however, that the senior qualified employe was not assigned to the position in dispute, also since no question has been raised as to Mr. Snyder's competency to fill the position formerly occupied by Mr. Delaney, and in view of the existing situation as shown in the foregoing findings, the following award is rendered.

AWARD

The claim of the employes is sustained, but without compensation for any wage loss.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 4th day of December, 1936.