

NATIONAL RAILROAD ADJUSTMENT BOARD  
Second Division

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 10, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (CARMEN)

DENVER & RIO GRANDE WESTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—That seniority of A. J. Mitchell be changed from April 1, 1929, to September 14, 1922, the original date of his employment as a carman.

EMPLOYEES' STATEMENT OF FACTS.—A. J. Mitchell was employed September 14, 1922, as a carman at 63¢, the minimum first class rate. December 1, 1926, he was given a 2¢ increase, or 65¢; later on he got a 1¢ increase, or 66¢. On April 1, 1929, he was given 3¢ increase, or 69¢, and started his first class date, when he had been getting 2¢ above the first class minimum rate, furnished a helper and completed any car assigned to heavy or light.

POSITION OF EMPLOYEES.—A. J. Mitchell having established his seniority as a carman October 9, 1922, should retain that seniority as he did all classes of work since he was employed and received more wages than the majority of inspectors. There was no rule in the agreement existing at that time that provided for loss of seniority when working on a lower class.

During the period in question there was an overlapping of rates among first and second class mechanics, as shown by the following classification, Rule 51, Freight Carmen's Work, Special Rules—Classification and Rates:

"First Class. Building, rebuilding, and heavy repairs of freight, work, and caboose cars, either all steel, or steel underframe and steel superstructure frame, or all wooden equipment, doing the necessary laying out, with or without drawings, including air piping, cleaning, oiling, stencilling, and testing air brakes (including passenger cars); all car inspecting, both passenger and freight; and all work that may be connected therewith. (Men to do inspecting must be able to speak and write the English language and have a fair knowledge of A. R. A. Rules and Safety Appliance Laws.) Operating woodworking machines, located in repair tracks; shop carpenter doing all miscellaneous carpenter work, and any other work of same or lower rates which employe is capable of doing.

Rate: 63 to 75 cents per hour, according to character of work produced by workman, both with respect to quality and quantity of output.

"Second Class. Running repairs, both heavy and light, freight work and caboose cars, making grain doors, standard or L. C. L. bracing; removing and applying journal bearings and wedges; applying journal box lids; brake beams, hangers, and brake shoes, and all similar work; oiling and packing journal boxes, and in addition to work outline, all car work not included in a higher rate, and any work of same or lower rates which employe is capable of doing.

"Rate: 54 to 65 cents per hour, according to character of work produced by workmen, both with respect to quality and quantity of output.

"NOTE.—Freight carmen, steel and wood car workers, to be on separate seniority list."

As shown by the above classification of work and rates, it was difficult for management and men to determine what class an employe belonged in for the reason that they were performing similar work. This fact is further substantiated by Exhibit B, which is a copy of a letter from the general mechanical superintendent.

On April 1, 1929, an increase of 4¢ was given first class men and 3¢ to second class men. All employes found working on repair track at that time, except air brake men, were reclassified as second class men and given the maximum

The carrier contends the history of this case indicates that Mr. Mitchell's seniority date of April 1, 1929, as a first class freight carman is correct, and further contends that the joint letter made as result of check of records and signed by the general chairman and the master mechanic on January 5, 1935, constitutes an agreement which the Board is without authority to set aside.

**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 employees 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 waived right of appearance at hearing thereon.

The Railway Labor Act (as approved June 21, 1934), among its many provisions, prescribes:

**"GENERAL PURPOSES**

"SEC. 2. \* \* \* (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Also:

**"GENERAL DUTIES**

"SECOND. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute."

This dispute was handled in accordance with the above provisions of the amended Railway Labor Act and properly settled between the duly authorized representatives of the employees and the carrier.

**AWARD**

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest: J. L. MINDLING  
*Secretary*

Dated at Chicago, Illinois, this 15th day of December, 1936.