

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 W. J. Gouran be changed from 6-15-30, his present date, to 5-16-28, the date he was promoted to carman at 64¢.

EMPLOYEES' STATEMENT OF FACTS.—W. J. Gouran was employed as a helper and on 5-16-28 was promoted to rip track as a carman at 64¢. On 7-24-28 he signed a bulletin, No. 228, and was sent to yard as inspector at 64¢, the same rate he got on the rip track. On April 1, 1929, he was reclassified and given 3¢, or 67¢, on account of working on rip track. On 6-15-30, he got 1¢ or 68¢, minimum first class rate.

POSITION OF EMPLOYEES.—W. J. Gouran, having established his seniority as a carman 5-16-28, the day he was promoted, he should retain his seniority from that date as he did all classes of work since that date. 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, 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 wood-working 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 workmen, 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 outlined, 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 lists."

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 second class rate of 67¢, and the air brake men and inspectors were given 4¢, or 68¢, minimum first class rate.

The attention of the Board is directed to Exhibit A, particularly the joint letter of January 5, 1935, in which it is agreed that the correct seniority date of Mr. Gouran, viz, June 13, 1930, is O. K., or correct.

The carrier contends the history of this case indicates that Mr. Gouran's seniority date of June 13, 1930 (not June 15, 1930), 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 your Board has no 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 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 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 employes 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 employes 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.