

Award No. 175
Docket No. 183
2-CRI&P-CM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That T. M. Bullock, carman at Trenton, Mo., be compensated for all time lost from July 6, 1936, until he was restored to service on August 3, 1936, account of failure of management to comply with current agreement, effective October 1, 1935.

EMPLOYEES' STATEMENT OF FACTS: T. M. Bullock, carman, Trenton, Mo., was notified on July 3, 1936, that effective July 6, 1936, he would be furloughed. Under date of July 7, 1936, he signified a desire to displace Carman Boyd, assigned to locomotive carpenter work, which bid was rejected by management, claiming that Bullock being a 73¢ rated carman could not displace an 81¢ rated carman. Pending the settlement of this claim he elected to displace a junior carman inspecting in the yards, but was held off of this assignment pending A.A.R. and physical examinations, which were unduly delayed.

POSITION OF EMPLOYEES: Management violated that portion of Rule 26, reading as follows:

"In the event of further reduction in expenses in department affected, forces will be reduced. When the force is reduced or jobs are abolished men affected will be privileged to place themselves according to their seniority. Seniority will govern in laying off men."

When making the reduction on July 6, inasmuch as they did not furlough the youngest employe in the seniority sub-division and permit the remaining employes to place themselves in accordance with that portion of Rule 26, reading, "Seniority will govern in laying off men," the management violated that portion of Rule 26 when making the reduction.

The management's position that Carman Boyd could not be displaced by Carman Bullock because of the difference in their rates is not in accordance with and is a violation of Rule 30, which provides for the various seniority sub-divisions of carmen, which reads:

"Carmen—Four Subdivisions as follows: Patternmakers, upholsterers, painters, other carmen."

The term "other carmen" embraces all classes of carmen not included in the sub-divisions required, and from long usage and past application of this rule by the Rock Island includes freight carmen, car inspectors, passenger carmen, locomotive carpenters and all other mechanics in car department

class machinist, doing locomotive spring and rigging work, engine truck and tender truck repairing, making application of cab curtains and side curtains, inspecting draw bar pins and other second-class machinists' work to comply with MP-51 inspection. Subsequently the position held by Carman Boyd was reclassified and assigned to the machinists' craft. Mr. Bullock was not qualified to handle this character of work and his request to displace Boyd was denied. Mr. Bullock made no further effort to exercise seniority rights until on July 24 when he appeared in person before the car foreman and requested he be permitted to displace a junior car inspector in the train yard. Mr. Bullock was advised it would be necessary that he qualify for such position under the provisions of Rule 96 of the current agreement with the shop crafts' organization, which reads:

"INSPECTION WORK. Men assigned to inspecting must be able to speak, read and write the English language and have a general knowledge of A.R.A. interchange rules and safety appliance laws. They must qualify for the positions by examination."

On the same date (July 24), District Car Inspector G. L. Price was at Trenton and examined Mr. Bullock on the A.A.R. rules. Mr. Bullock was disqualified and advised that he should review the rules and when he was ready for a subsequent examination to advise his foreman. He was furnished the necessary form to the doctor to take physical examination, which he did on July 27. From July 24, when he was disqualified on A.A.R. rules, until August 3, presumably Mr. Bullock was reviewing and studying the rules, and when he notified the foreman that he was ready for and did present himself for a second examination on August 3, he was successful in passing and was advised he could go to work in the train yard at 4:00 P. M., August 3. However, he decided to wait until the next day, August 4, at which time he displaced Inspector Ryan and went to work on that date.

Mr. Bullock was not competent to perform the work being handled by Mr. Boyd, because the work handled by Boyd was that of a second-class machinist and from July 7 until July 24, as well as from July 24 to August 3, Mr. Bullock's failure to work was the result of his failing to select and qualify for a position which he could handle. Had Mr. Bullock indicated on July 7 or 8 or any date subsequent thereto and prior to July 24 that he desired to displace a car inspector, he would have been given examination before July 24, and although it is reasonable to assume he would also have failed on the examination at that time, nevertheless he could have reviewed and studied the rules and been at work not later than four or five days after his position of car repairer was discontinued.

Mr. Bullock's loss of time was his own responsibility in that he elected to remain idle after July 7 when he could have requested permission to displace a junior employe and qualify for the work required on position of car inspector.

Insofar as the position held by Mr. Boyd being improperly classified and refusal to permit Mr. Bullock to place himself upon that position is concerned, the carmen's organization enjoyed the benefit of this additional position being held by a member of their craft for a good many years when the work properly belonged to the machinists. It is not the carrier's responsibility that Mr. Bullock was not competent to perform the duties of the positions he sought to place himself upon, nor is it the carrier's responsibility that he was unable to qualify by examination of July 24 for position of car inspector. There was no desire on the part of the carrier to deny Mr. Bullock the exercise of seniority rights provided such exercise of seniority was on positions which he was competent to fill. The claim of the employes should be denied because it is not supported by the contract.

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.

Carman T. M. Bullock was laid off July 6, 1936, and expressed a desire to displace Junior Carman Boyd, who had an assignment as locomotive carpenter. The carrier refused Carman Bullock's request, which was contrary to the provision of the following rules of agreement in effect:

RULE 26

" . . . In the event of further reduction in expenses in department affected, forces will be reduced. When the force is reduced or jobs are abolished men affected will be privileged to place themselves according to their seniority. Seniority will govern in laying off men."

RULE 30

" . . . Carmen—Four Subdivisions as follows:

Pattern makers
Upholsterers
Painters
Other Carmen."

The sub-division "Other Carmen" includes Locomotive Carpenters.

AWARD

T. M. Bullock will be paid for wage loss from July 6, 1936, until restored to service August 3, 1936.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of October, 1937.