Award No. 218
Docket No. 209
2-N&W-MA-'38

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Odell Baker be reinstated to his former position with seniority rights unimpaired and paid for time lost, fourteen hundred and sixty-two dollars ($1462.00).

EMPLOYES' STATEMENT OF FACTS: Mr. Odell Baker was employed by the Norfolk and Western Railway Company at Portsmouth, Ohio, on December 13, 1922, as an electric and acetylene welder, and was immediately assigned to work with machinists. He voted as a machinist welder in all mechanical association elections. He worked as a machinist welder for four or five years when he was changed from machinist welder to a blacksmith welder, but continued to perform the same work on the first trick in the roundhouse. At the time of this change he was told by Mr. Gardner, foreman, and Mr. Walter Stephenson, blacksmith committeeman, that he would be given seniority as a blacksmith welder, which made him the second oldest in point of seniority, and, to assure Mr. Baker of this, a seniority list, on which he was listed as a blacksmith welder, was shown him. In relation to this, we offer as Exhibit A a notarized statement from Mr. Walter Stephenson, committeeman representing the blacksmiths in the mechanical association, the so-called company union.

About eight years previous, Mr. Baker's job on the first trick was abolished. As a consequence, he bumped the third trick man who went to the back shop. Mr. Baker had the privilege of going to the back shop, but did not go, as Mr. Dullin, foreman, did not know Mr. Baker and stated that he would rather have the man Mr. Baker bumped. Mr. Payne, general foreman, Mr. Gardner, roundhouse foreman, and Mr. Stephenson, shop committeeman, author of Exhibit A, agreed that Mr. Baker could go if he wished. About five months later, Mr. Baker was again assigned to the first trick in the roundhouse and worked there until about October, 1933, when his job was again abolished. He asked for the right to go to the back shop on the first trick, but was informed that he held no seniority there and that he was the youngest blacksmith welder at the roundhouse after he bumped the third trick man.

About July, 1935, a seniority list was posted on the bulletin board, and Mr. Baker was listed as a machinist welder. In verification of this, we offer as Exhibits B and C notarized statements signed by T. R. Reynolds and W. R. Mullen. Mr. Mullen is a welder now working at Portsmouth, and the oldest welder in point of seniority.

Three months after the foregoing list was published, Mr. Baker was laid off and listed as a blacksmith.

welder on the third shift who was regularly assigned to boiler welding was engaged on work from which he could not immediately be withdrawn, Baker was asked to cut out and to weld a crack approximately 17 inches long, in the front flue sheet of an engine. He said he had not done any fire box welding and that he did not think he could do it. He was told to try. He attempted to make the weld, but it was necessary to cut same out and have the work done by the welder assigned to boiler welding.

Organizer Anderson also said during his discussion of this case with the carrier that Baker should have seniority as machinist or blacksmith. Such a contention cannot be supported by the rules. Rule 30 of the schedule in effect at the time Baker was furloughed provided that a separate seniority roster had to be maintained for welders, and that seniority was to be confined to each craft. There was the further provision that employes assigned as welders were to be allowed to retain their original seniority in the craft from which selected.

Baker was not selected as a welder from any craft. He was originally employed as a welder, and is, therefore, without right to claim he should have been retained in the service as a member of any other craft.

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.

Much of the written testimony as well as the argument produced at the hearing is immaterial.

Briefly, the facts are that Odell Baker, classified and listed on the seniority roster as a welder, was laid off due to a reduction in force.

The carrier contends that Baker was laid off for the reason that he was not competent to perform boiler welding work.

The carrier admits that there were two junior employes, also classified and assigned as welders, retained in the service when Baker was laid off. The employes' representatives claim that Baker is and was competent to perform general welding work including boiler and fire box welding and that therefore the junior welder should have been laid off and Baker retained in the service.

The crux of the dispute turns to the question solely of whether Baker was competent to perform the work required. The evidence covering this point is contradictory; the carrier shows that it reached its decision because of Baker's failure to perform a satisfactory job of flue sheet welding a few months prior to the time that he was laid off, whereas Baker and his representatives declare that Baker was never apprised of his failure to perform satisfactorily any welding work assigned to him, and they make the further claim that Baker is competent and qualified to perform general welding work.

The Division is therefore confronted with a question of fact. In view of all the circumstances and particularly the conflicting testimony, it is the opinion of the Division that Odell Baker is entitled, under the spirit and intent of the rules of agreement, to a fair trial to determine his qualifications for boiler and fire box welding work.

AWARD

A trial as provided for in the rules of the agreement will be given Welder Odell Baker. If the parties to the dispute are unable to dispose of the ques-

tion of Odell Baker's qualifications as a welder within thirty days, the results of the trial will be jointly referred to this Division for disposition.

If Odell Baker is qualified, he will be paid for wage loss.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of February, 1938.