

Award No. 219

Docket No. 203

2-B&M-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: Machinist Edward Blaha should be paid one day's pay for each week the six-day jobs have worked, since the date he bid off the job in the brass room.

EMPLOYEES' STATEMENT OF FACTS: Edward Blaha, a machinist at Billerica shops, bid for, and received a position in the brass room. After working on the job for seven days he was told that his production point was too low, and he was transferred to the erecting floor. The job in the brass room worked six days per week, and the job upon which Blaha has since worked is a five-day job, causing a loss of one day per week. Shortly after the presentation of this grievance, the management abolished the brass room job.

POSITION OF EMPLOYEES: We contend that the treatment accorded Blaha by the foreman before the former began to work (as shown in Exhibit A) constituted rank discrimination. We feel that Blaha, who has worked as a machinist at Billerica for fourteen years with no prior complaint from the management against the quality of his workmanship, or quantity of his production, was well able to cover the job in the brass room.

We further contend that if there was a low point of efficiency in this instance, that the treatment accorded by the supervisor was a contributory factor to it.

Since the management agreed to, and did abolish piece work on the system with the signing of the present contract, we contend that it is a violation of Rule 1 to use figures arrived at during piece work time studies to disqualify men working on the present hourly basis.

Exhibit B is proof of how far this management is willing to go to defeat this case. In spite of the fact that Blaha has been classed as a machinist at Billerica, during which time he became one of the best valve setters at the point, there is no mention of these truths contained in the management's proposed "joint" statement of fact.

We further contend that the abolishment of the brass room job was an attempt to dissolve this grievance.

CARRIER'S STATEMENT OF FACTS: Edward Blaha was born June 11, 1898, and entered the service of the Boston and Maine Railroad as a machinist helper July 2, 1923. He worked in that grade until March 19, 1924, when he was given rating as a machinist and has been so rated since.

SUMMARY

First: There is no claim for compensation properly before the Second Division, National Railroad Adjustment Board, as there was no time claimed in handling the case on the property.

See carrier's Exhibit No. 1 and letters from general chairman to I. C. Blodgett, May 4, 1937 (Employee's Exhibit A), and letters from general chairman to A. H. Slader, June 8, 16 and 17, 1937.

In employe's Exhibit A, it is stated:

"This case can be easily and expediently settled by placing Blaha back on the job and allowing him to work under decent conditions."

Secondly: Blaha lost no compensation anyway. See Statement of Facts as to earnings for three weeks ended May 6, 1937, of Blaha and Cone.

Thirdly: Blaha was given a fair trial as contemplated by Rule 13, which says in first paragraph "* * * oldest employe in point of service shall, if sufficient ability is shown by trial, be given preference * * *"

Carrier's Exhibit No. 6 shows actual performance during trial period. No reasonable person would say that a man who is 67% below normal production has sufficient ability to satisfactorily fill a position.

Fourthly: The man was not discriminated against. Carrier's Exhibits Nos. 2, 3, 4 and 5 confirm this statement.

Fifth: The job in brass room was not abolished to get rid of claim. As explained in Statement of Facts the work was caught up and it was no longer necessary to have an additional man on air brake work in brass room.

Sixth: The abolition of piece work did not take away from management the right to use whatever method it desires to test men's ability to perform work.

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.

A portion of the rule involved in the instant case is quoted below:

Bulletining New Positions or Vacancies—Rule 13.

"When new jobs are created or vacancies occur in the respective crafts, the oldest employe in point of service shall, if sufficient ability is shown by trial, be given preference in filling such new jobs or vacancies that may be desirable to them.

* * *

An employe exercising his seniority rights for, or assigned on account of application, to a vacancy under this rule will lose his rights to the job he left. If, after a fair trial he fails to qualify for the new position, he will have to take whatever other position may be open in his craft."

The employes argue that Machinist Blaha was not given a fair trial, that he did not have the proper tools and equipment, and that his assignment was resented by the foreman in charge, with the result that he was unable to do justice to himself or his work.

The carrier contends that his production during the trial was inadequate, and, therefore, he did not show sufficient ability to entitle him to be permanently assigned.

This dispute narrows down to the question of whether or not Machinist Blaha was given a "fair trial" to qualify for the job he bid for in the brass room, as provided for in Rule 13 of the agreement in effect.

Much conflicting testimony was presented to the Division, both in the written record and in the oral hearing.

The evidence submitted by either of the parties to this dispute may support their respective positions; however, this Division finds it difficult to arrive at a conclusion to support either of the parties' contentions in their entirety.

The Division is of the opinion that the purpose of the rule will be served by the carrier affording Machinist Blaha another opportunity to qualify for the position in question under conditions comparable to those afforded other employes performing this class of work.

AWARD

Dispute to be disposed of in accordance with the last paragraph of the findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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