

Award No. 251

Docket No. 258

2-MP-BK-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (BLACKSMITHS)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That seniority date of Blacksmith Helpers J. L. Nelson and T. B. Cromwell, North Little Rock, Arkansas, shops is properly September 4, 1924, and not August 3, 1922.

EMPLOYES' STATEMENT OF FACTS: J. L. Nelson and T. B. Cromwell were hired August 3, 1922, and sent to Osawatomie, Kansas, as blacksmiths. They worked in that capacity for a period of possibly two months, when it was found they could not perform blacksmith work. They were set back to helping blacksmiths at Osawatomie, Kansas, and worked in that capacity about twenty-three months, at which time they requested to be transferred to North Little Rock shops as helpers, and such transfer was made effective September 4, 1924. They were carried on seniority roster at North Little Rock, date of seniority as September 4, 1924, from effective date of transfer until and including seniority roster posted and approved by carrier July 1, 1930, when seniority date of J. L. Nelson and T. B. Cromwell was changed to August 3, 1922, by order of Shop Superintendent W. H. McAmis, under date of September 11, 1930.

POSITION OF EMPLOYES: We contend that the agreement between the Missouri Pacific Railroad Company and Missouri Pacific Mechanical Department Association, effective April 1, 1929, Rule 15, reading:

"RULE 15

"Employees transferred from one point or seniority sub-division to another, with a view to accepting a permanent transfer, will, after 30 days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employees will not be compelled to accept a permanent transfer to another point or seniority sub-division."

has been violated. We further contend that in all agreements subsequent to the National Agreement, up to and including the present agreement, Rule 15 reads the same. We also contend that no employees coming under the provisions of all past and present agreements, can transfer from one point to another without losing their seniority at point transferred from after thirty days, and seniority starts at point transferred to on date of transfer.

We contend that any seniority given J. L. Nelson and T. B. Cromwell beyond September 4, 1924, by the carrier, violates the provision and intent of this rule; that in changing their seniority date from September 4, 1924,

back to August 3, 1922, not only violates the provision of the agreement, but deals an injustice to forty-two employes senior to them and places J. L. Nelson and T. B. Cromwell on top of the seniority roster making the forty-two men, who were senior to them, become junior to them.

We further contend this is a discrimination against the forty-two employes by the carrier, and J. L. Nelson and T. B. Cromwell were given seniority with the provision that agreement does not provide. We contend that any evidence produced by the carrier to substantiate their right to give these two men seniority over forty-two other employes, has been done against the wishes of forty-two protesting employes.

This violation has been under protest, either verbally or in writing since the changes were made. Therefore, we contend that with the supporting evidence we have submitted, that these men should have consideration of their rights under the provisions of the agreement. The employes wish to call the Honorable Board's special attention to Exhibit A, showing exact position employes should be on seniority roster; also Exhibits B, C, D and E, affidavits; also Exhibit F, letter of Mr. McAmis where the company arbitrarily changed the seniority dates of these employes in question.

CARRIER'S STATEMENT OF FACTS: Joe L. Nelson employed as blacksmith helper:

North Little Rock shops from October 22, 1906, to July 1, 1922
Osawatomie, Kansas from August 3, 1922, to September 1, 1924
North Little Rock shops from September 4, 1924, to date.

Thad B. Cromwell employed as blacksmith helper:

North Little Rock shops from October 1, 1912, to July 1, 1922
Osawatomie, Kansas from August 3, 1922, to September 1, 1924
North Little Rock shops from September 4, 1924, to date.

When these two men returned to service in the North Little Rock shops on September 4, 1924, their names were so recorded as of that date on the employes' seniority roster, which action was subsequently protested by representatives of the employes—see carrier's Exhibits 1 to 9, incl. The employes' request that Nelson and Cromwell's seniority date be corrected and they be credited with the date that they returned to service following the strike of July, 1922, viz: August 3, 1922, was granted and they have been so shown on the employes' seniority roster since 1930.

POSITION OF CARRIER: The initial dispute as to the seniority date of these two men was handled in accordance with provisions of our wage agreement with the employes in 1930 by the duly authorized representatives of the employes and the carrier in strict accord with the Railway Labor Act. The settlement of 1930 as evidenced by carrier's Exhibits 1 to 9 incl., constituted an agreement disposing of the question at issue. There has been no question raised as to authority of the then general chairman, Mr. T. E. Miller of the blacksmiths, to act in such matters, and there is nothing in the record of fraud or other misconduct in reaching the agreement between the carrier and the then representatives of the employes in granting the employes' request that Nelson and Cromwell's seniority be corrected to read August 3, 1922.

Your Honorable Board's attention is called to its Award No. 186, which is a parallel case and in which the claim of the employes for changing a seniority date of an employe that had been established by agreement with representatives of the employes was denied.

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.

Blacksmith Helpers J. L. Nelson and T. B. Cromwell were transferred to the North Little Rock, Arkansas, shops September 4, 1924, from Osawatomie, Kansas.

The proper seniority of these employes has been a subject of discussion on the property subsequent to the date of transfer. The record does not show the subject has ever been closed out or disposed of by the parties or their duly authorized representatives.

Rule 15 of the agreement in effect supports the employes claim.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of July, 1938.