

Award No. 254

Docket No. 251

2-C&O-MA-'38

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (Machinists)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (a) That N. A. McKenzie, Huntington shops, Chesapeake and Ohio Railway Company, is wrongly classified as a machinist helper, and holds no seniority as such, and should have his name stricken from the machinist helpers' seniority roster; and

(b) The senior suspended machinist helper in point of service, Huntington shops, during the period that Mr. N. A. McKenzie has worked as a machinist helper, should be compensated for all time lost account of being deprived of work account of McKenzie working.

NOTE: Due to the voluminous record in this case, it has been found desirable to abbreviate the position of the carrier and employes, the substance of which is as follows:

EMPLOYEES' STATEMENT OF FACTS: Mr. N. A. McKenzie was last employed by the Chesapeake and Ohio Railway Company at Huntington shops as a laborer in the car department the latter part of September, 1922; he continued to work as a laborer, with the exception of some extra time put in as carman helper, material carrier, up to the latter part of December, 1922, when he was placed on a nut tapper. The nut tapping machine at that time was located in a building between the power house and the car shop wheel room, and which was adjacent to the passenger car shops and yards. The tapping machine was later on moved to the sill straightening shed, where they straighten sills off of cars. Mr. McKenzie continued to operate the nut tapper up to April 4, 1931, when he was suspended as a carman helper and another carman helper by the name of Harry Handley, who was senior to Mr. McKenzie in point of service, was placed on the nut tapper, and continued to operate same until the machine later on was placed under the locomotive department. Account of the machine being moved into that department, a machinist helper was placed on the nut tapper.

On or about May 2, 1934, Mr. McKenzie was called back to the service as a suspended carman helper and placed on job packing boxes in the tank truck department; he was again suspended as a carman helper in a force reduction on or about September 21, 1934. While suspended at Huntington, on two different occasions he was sent to Peach Creek, W. Va., as a suspended carman helper, and worked there packing boxes on the yard.

Mr. McKenzie worked under the supervision of Mr. W. F. Eifort, foreman over the wheel room in car department, up to November, 1926, when

Mr. Gould corresponded with Mr. Murray, particularly with reference to his discovery, above referred to, that Mr. McKenzie had appeared on both machinist helpers and carmen helpers' seniority rosters when he was suspended, and a representative of the superintendent motive power's office (J. E. Foster, chief clerk, locomotive department) was delegated to conduct an investigation on the ground. After Mr. Foster had made a very thorough investigation, including several trips to Huntington in endeavoring to locate various old records pertinent to Mr. McKenzie's status, it was found that the records showed conclusively that Mr. McKenzie had been promoted to machinist helper and so classified on the locomotive department time book and pay roll; that he had been assigned continuously after his promotion to machinist helpers' work, and had been so recognized on all machine department seniority rosters that were available until after his suspension as a carman helper, and that the listing of his name on the carmen helpers' seniority roster had been in error.

The company's representative conferred with General Chairmen Gorman (machinists) and Broomhall (carmen) with a view to correcting Mr. McKenzie's seniority standing on the seniority rosters at Huntington to conform to the records, but neither of whom would agree that Mr. McKenzie was a helper of his craft; whereupon the company acted on its records and restored Mr. McKenzie to the service as machinist helper, with seniority unimpaired from the date he was promoted to machinist helper, December 23, 1922.

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.

Employes operating machines known as nut tapping machines are designated as "nut tappers" in classification of work rule for machinist helpers (Rule 64) and for carmen helpers (Rule 156).

These "nut tappers" are helpers and are classified as such and shall be carried on their proper helper seniority roster.

N. A. McKenzie was performing work coming under the provisions of Rule 156.

This controversy is of long duration, developing into a very complicated situation involving the carrier and two organizations to an extent that placing responsibility for any loss of wages by any employe cannot be clearly established.

AWARD

- (a) Claim sustained.
- (b) Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1938.