

Award No. 323

Docket No. 334

2-B&M-EW-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: Management is without right under Rule 21, agreement of April 1, 1937, to deny the right of a senior employe to displace a junior employe, on the same roster, on the ground that said senior employe is not qualified to perform the duties of the junior employe's position.

Robert M. Kehoe should have been allowed to displace Colin McClellan, who was junior to him on the same roster.

Robert M. Kehoe should be compensated for what Colin McClellan earned as electrician at the North station, Boston, Mass., May 22 to May 30, 1938, inclusive, amounting to forty-eight hours at 86¢ per hour, or \$41.28.

JOINT STATEMENT OF FACTS: There is submitted as joint Exhibit 1 copy of seniority roster of electrical crew, Boston and Maine Railroad, for 1938.

On May 21, 1938, position of electrician in the electrical crew, regular incumbent Antonio Rea (Roster No. 5) was temporarily held by Robert M. Kehoe (Roster No. 17) pending award on the basis of bids. Position was awarded to Fred W. Kane (Roster No. 12), who was the senior bidder.

Mr. Kehoe notified electrical supervisor that he would displace on the electrician's job assigned to maintenance in the North station, Boston, Mass., temporarily held by Colin McClellan (Roster No. 18).

Kehoe's displacement was not accepted by the electrical supervisor on the ground that he did not possess the necessary qualifications. The position of the electrical supervisor was sustained by the engineer of signals and telegraph and the assistant general manager.

Kehoe made claim for time lost May 22 to 30, which McClellan earned, amounting to forty-eight hours.

Time claim ended May 31, when Robert Gribben (Roster No. 13) returned to work, he being senior to both Kehoe and McClellan.

There is in force an agreement between the Railway Employees' Department, System Federation No. 18, and the Boston and Maine Railroad, which became effective April 1, 1937.

Rules 13 and 21 of that agreement read as follows:

work properly on the position selected, the management to be the judge, subject to appeal on the basis of unjust treatment under Rules 29 and 30 of the agreement, which rules cover "Grievances and Appeals" respectively. In this case, on account of a man holding the position working alone and so much depending on the proper handling of the electrical apparatus, if Kehoe had been assigned it would have been necessary to have assigned a supervisor to remain with Kehoe until he qualified, or have kept McClellan or some other qualified man with Kehoe until he was fully qualified with incidental additional expense to the railroad.

As previously pointed out, and as shown in joint Exhibit 1, both men entered the service the same date (August 20, 1928) as linemen; McClellan was later (October 5, 1928) reclassified as an electrician and has continued in that class. When grouped together on one roster, Kehoe was shown first, no other reason being known than that Kehoe would come ahead of McClellan alphabetically. There is, therefore, a real question as to whether Kehoe should be considered senior to McClellan.

* * * *

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 employees 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 waived right of appearance at hearing thereon.

The rules of agreement involved are Nos. 13 and 21, and quoted in the submission.

It must be admitted that the creation of a vacancy actually brought about the request of Electrical Worker Kehoe for the position he requested; therefore, it is only reasonable to say that if there was a question about Kehoe's qualifications he was entitled to a trial. Kehoe was not given a trial.

AWARD

Electrical Worker Kehoe shall be given a trial in accordance with the provisions of Rule 13 of the current agreement. Claim for compensation denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1939.