

NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 13, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. OF L. (CARMEN)  
WABASH RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** Claim that furloughed painter, Leonard Stephens, Decatur, be restored to the position formerly held by him and that he be paid for time lost [six (6) days], account other than painters performing painters' work.

**EMPLOYEES' STATEMENT OF FACTS:** Leonard Stephens, painter, was removed from service February 20, 1938, and while he was out of service the company used laborers to perform work formerly performed by Leonard Stephens.

**POSITION OF EMPLOYEES:** There has always been at least one painter employed at the Decatur, Illinois, roundhouse until February 20, 1938, at which time Master Mechanic T. B. Reddix notified Mr. Leonard Stephens that he had to lay off a painter and as Mr. Stephens was the only painter employed at the roundhouse, he would be furloughed.

The employes contend that there is more than enough painters' work being performed by other than painters to fully occupy at least one painter full time. The engine numbers furnished here went through the Decatur roundhouse between the dates June 23 to June 30, 1938, and had the painting done on them as follows:

Engine Nos. 661-662-666-670-667 had about four (4) sq. ft. of painting done on the cylinder fronts;  
Engine Nos. 2438-2524-2507-2702-2705-2708-2813-2908-2919-2922-2924 had about five (5) sq. ft. of painting done on cylinders;  
Engine Nos. 2908-2919-2922-2924 had about twenty-four (24) sq. ft. of painting done on fire box jackets;  
Engine No. 2813 had about eighteen (18) sq. ft. of painting done on fire box jacket,

and which painting was done by others than the painter.

The employes contend that this is a clear case of discrimination against Painter Stephens, who has a total of twenty-three (23) years of service with the Wabash Railway. His work has always been satisfactory. Therefore, we feel that Mr. Stephens should be given the work that rightfully belongs to him.

On February 23, 1938, Mr. Stephens and Machinist Committeeman Schalla and General Chairman Jenner of the carmen met with Master Mechanic T. B. Reddix and the question of painting was discussed, Mr. Reddix agreeing to call Mr. Stephens to do all pointing that was to be done. General Chairman Jenner called Mr. Reddix' attention to painting being done by someone other than Painter Stephens and was promised every time that he (Mr. Reddix) would stop it and have Mr. Stephens called in to do the painting.

**POSITION OF CARRIER:** It is the position of the carrier that the National Railroad Adjustment Board has no jurisdiction of the alleged dispute referred to in the petitioner's ex parte statement of claim for the reason that the alleged dispute has not been handled with the carrier in accordance with the provisions of Section 3 (i) of the Railway Labor Act, as amended June 21, 1934, and, therefore, the National Railroad Adjustment Board is without jurisdiction.

**ON THE MERITS:**

Subject to and without waiving the foregoing objections, the carrier makes the following statement on the merits:

As there is not sufficient work to justify the employment of a regular painter at the Decatur roundhouse, the request of the petitioner that he be restored to the position he held prior to February 19, 1938, is without foundation under the provisions of the agreement, effective February 1, 1934. There is no rule in that agreement that provides or contemplates that locomotive painters will be employed at roundhouses or points where there is no work for them to perform.

When consideration is given to that fact and the further fact that Leonard Stephens was, on each date subsequent to February 19, 1938, recalled to service at the Decatur roundhouse when the services of a locomotive painter were required, it is obvious that his request to be restored to the position he held prior to February 19, 1938, is without merit.

As hereinbefore stated, the alleged dispute, set up in the petitioner's ex parte statement of claim, has not been handled with the carrier in accordance with the provisions of Section 3 (i) of the Railway Labor Act and, therefore, is not properly before the Board, and accordingly the contention of the petitioner should be dismissed and this case removed from the docket of the Board.

**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.

In view of the conflicting statements made by the parties as shown in their respective submissions, the Division finds that this dispute should be remanded to the parties to jointly develop the facts and make further effort to effect settlement of the dispute in compliance with Section 2, Second, of the amended Railway Labor Act, without prejudice to the rights of the parties or either of them to resubmit the issue in event they shall be unable to make a settlement of the dispute.

**AWARD**

Claim remanded in accordance with the above findings without prejudice to the rights of the parties or either of them to resubmit the dispute if not disposed of.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated in Chicago, Illinois, this 14th day of June, 1939.