

**Award No. 373**

**Docket No. 351**

**2-Va-MA-'39**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 40, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (MACHINISTS)**

**THE VIRGINIAN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That O. C. Miller, differential rated machinist helper, now demoted to helper's work and rate, should be restored to his differential rate and work, with pay at the rate of the difference between helpers' rate of 62 cents per hour and his previous differential rate of 75 cents per hour for all time worked since June 10, 1938, the date upon which he was demoted, and until he is restored to his previous differential rate and work.

**EMPLOYEES' STATEMENT OF FACTS:** During December, 1922, Mr. O. C. Miller was employed as a machinist by the Virginian Railway Company at Princeton, W. Va., and continued in the service as such until October 23, 1923, at which time he was cut back to a differential rate of ten cents per hour under that of the regular machinist rate, he then being assigned to and continued on the binder job at the reduced rate until June 10, 1938, at which time a notice was posted, dated June 7, 1938, which notice abolished his differential rate. This forced him to take a helper's job at helper's rate of pay which was and is now 62 cents per hour, being a reduction of 13 cents per hour below that of his previous differential rate which he had received for the past 14 years and 8 months. A junior employe, in point of service who had entered the service much after the date upon which O. C. Miller, was given the differential rate, was then assigned to the binder job, which was the work formerly done by Miller. O. C. Miller was demoted without being given a hearing and was not advised thereof until the notice of his demotion was posted upon the bulletin board.

**POSITION OF EMPLOYEES:** We claim that when O. C. Miller was given a differential rate as of October 23, 1923, and continued on the binder job, he then and there established his right thereto and that no employe, entering the service at a later date could bump him therefrom. We further claim that his assignment to a differential rate as of October 23, 1923, was in keeping with Rule 47 of the then and now existing agreement covering employes of the mechanical department; however, there is no rule in that agreement which permits O. C. Miller to be arbitrarily removed from that job to make way for a junior employe who had entered the service 14 years later.

We further claim that when management posted the bulletin quoted below, it did thereby on June 10, 1938, unjustly remove O. C. Miller from the job of fitting and applying binders, which work he had performed for a period of 14 years and 8 months, when management did assign to that work

drill presses, bolt threaders, wheel presses (on car, engine truck and tender truck wheels) not tappers and facers, bolt pointing and centering machines, car brass boring machines, and twist drill grinders; cranimen helpers on locomotive and car work; attending tool room, machinery oiling, belt repairing, locomotive oiling and box packing; apply all couplings between engine and tender, locomotive tender and draft rigging work; and all other work generally recognized as helpers work.

NOTE: A differential rate of ten (10) cents per hour less than minimum rate established for mechanics will be paid to helpers regularly assigned to perform work underlined in this rule."

that the differential rate applies only to helpers regularly assigned to perform the work underlined in this rule. This shows clearly that the carrier decides when helpers will be regularly assigned to perform work underlined in this rule, and that when in its opinion there is insufficient work of this class at a shop or roundhouse to justify the assignment of a differential machinist helper regularly the work may be assigned to machinists, and which is the practice at all of the carrier's terminals, and has been for years.

Where it would require the use of differential helpers in excess of the number necessary to perform the work economically the carrier has the right to abolish positions at its discretion and assign the work involved in the most economical manner, provided the seniority rights of the employees are protected, which in this instance was the case.

Therefore, the carrier respectfully requests that claim of the employees be 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 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 were given due notice of hearing thereon.

Machinist Helper O. C. Miller had been doing a class of work for more than fourteen years not covered by his classification.

In view of the circumstances surrounding his case, he should be immediately restored to the position he occupied prior to June 10, 1938, and paid in accordance with the provisions of the agreement in force.

The future status of Helper O. C. Miller should, in the opinion of this Division, be determined by mutual negotiations and agreement between the parties.

#### AWARD

Machinist Helper O. C. Miller will be restored to the position he occupied prior to June 10, 1938, and reimbursed for loss of compensation from June 10, 1938, in accordance with the provisions of the agreement in force.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1939.