

Award No. 374

Docket No. 352

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 L. S. Oliver, differential rated machinist helper, now demoted to helping with helpers' rate, should be restored to his differential rate and job with pay at the rate of the difference between helpers' rate of 62¢ per hour and his previous differential rate of 75¢ per hour for all time worked since September 1, 1938, the date of his demotion, until restored to his previous rate and work.

**EMPLOYEES' STATEMENT OF FACTS:** Having previously been employed and remaining in the service of the Virginian Railway Company, Mr. L. S. Oliver was assigned to duty as a machinist helper at Princeton, W. Va., on July 1, 1922. He continued as such until January 18, 1924, at which time he was promoted and assigned to the job of repairing pneumatic tools and given a differential rate of pay ten cents per hour below the regular machinists' rate. This assignment and rate was in keeping with Rules 47 and 51 of the then and now existing agreement. His assignment to work and rate of pay was as then established, and continued until September 1, 1938, at which time he was demoted to machinist helper's rate and assigned as a tool room attendant; and a junior employe, in point of service, who had entered the service much after the date Oliver was promoted and given the differential rate of pay, was then assigned to perform the work of repairing pneumatic tools, which is the job and work formerly held and performed by L. S. Oliver, at differential rate. Mr. Oliver was demoted without being given a hearing and was not advised thereof until the bulletin was placed upon the board.

**POSITION OF EMPLOYEES:** We claim that when L. S. Oliver was promoted, as of January 18, 1924, and given a differential rate of pay ten cents per hour under that of regular machinists' rate, that his promotion was in keeping with Rule 47 of the then and now existing agreement in effect on the Virginian Railway covering employes in the mechanical department.

**"Rule 47**

**"When vacancies occur, temporary or permanent, mechanics helpers in the service will be given preference in promotion to position paying either same or higher rate at station employed, seniority to govern as per Rule 16."**

**Rule 16 provides:**

**"\* \* \* the officer in charge to be the judge."**

applying trailer and engine trucks and parts thereof; removing and repairing springs and spring rigging; removing and repairing brake rigging; removing and applying air pumps in erecting shops; operating drill presses, bolt threaders, wheel presses (on car, engine truck and tender truck wheels) nut tappers and facers, bolt pointing and centering machines, car brass boring machines, and twist drill grinders; cranemen helpers on locomotive and car work; attending tool room, machinery oiling, belt repairing, locomotive oiling and box packing; applying all couplings between engine and tender, locomotive tender and draft rigging work; and all other work generally recognized as helper's 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 this class of work and that when in its opinion there is insufficient work of this class at a shop or roundhouse terminal 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 rates of pay or positions exist that result in an unnecessary expense, the carrier has the right to abolish them at its discretion and reassign the work 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 employee or employees involved in this dispute are respectively carrier and employee 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 L. S. Oliver 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 September 1, 1938, and paid in accordance with the provisions of the agreement in force.

The future status of Helper L. S. Oliver should, in the opinion of this Division, be determined by mutual negotiation and agreement between the parties.

#### AWARD

Machinist Helper L. S. Oliver will be restored to the position he occupied prior to September 1, 1938, and reimbursed for loss of compensation from September 1, 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.