

Award No. 453

Docket No. 451

2-GN-FO-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That the practice of permitting Mr. W. F. Potter, machinist, roundhouse, Willmar, Minnesota, to displace a laborer when he is furloughed as a machinist be discontinued, and that his name be removed from the laborers' seniority roster.

JOINT STATEMENT OF FACTS: Mr. W. F. Potter entered the service of the company as roundhouse laborer, Willmar, Minnesota, December 19, 1922, and was promoted to machinist helper December 18, 1923; machinist helper apprentice, May 24, 1926; machinist, June 26, 1929. In a reduction of force, which occurred November 21, 1931, Mr. Potter's seniority would not entitle him to work as a machinist. He was permitted to at that time exercise his seniority as a roundhouse laborer under date of December 19, 1922, which was his original seniority date as laborer.

The seniority roster bearing the names of employees of this department as per Rule 13 (b), quoted in part herein:

"Seniority rosters will be revised and posted in January of each year, and shall be open for correction for a period of thirty (30) days from date of posting, on presentation of proof of error by an employe or his representative."

is revised January 1 of each year and when this revision took place, the local committee protested the name of Mr. Potter being included thereon. Said protest was presented to Mr. J. B. Haslet, roundhouse foreman, Willmar, Minnesota, who declined our request.

The case was handled thereafter in accordance with the provisions of agreement referred to herein, but management sustained the position of Mr. Haslet.

POSITION OF EMPLOYEES: That carrier is violating the provisions of Rule 13, which reads in part as follows:

"(a) Seniority in each class covered by this agreement shall be confined to each department (shop, car and roundhouse) at point employed, in each of the following classes:

Scope 1. Power House Employees. (Engineers, Firemen and Oilers.)

Scope 2. Laborers.

Rule 13 (b) of the schedule, covering stationary engine employees and roundhouse and shop laborers, provides:

"Seniority rosters will be revised and posted in January of each year, and shall be open for correction for a period of thirty (30) days from date of posting, on presentation of proof of error by an employe or his representative. The duly accredited representative of the employes shall be furnished with a copy of the roster upon request. No complaint filed after roster has been posted thirty (30) days will be considered."

That there was no error in the roster as posted is evidenced by the joint statement of facts detailing the previous service of the employe in question, and by the carrier's exhibits submitted herewith, such service record showing that the employe in question was entitled to the disputed seniority on the basis of Exhibits C-2, C-3, and C-4, and that such had heretofore been so recognized. The claim of the employes, therefore, is not for a correction of a roster, but is a challenge to the application of the agreement between the carrier and its employes. It further is entirely obvious that Rule 13 (b), above quoted, does not provide for arbitrary change in seniority rights, but merely for correction of errors in the rosters as they might appear from year to year, and which errors might not be in accordance with the actual facts of the employe's service, or which might be purely typographical errors. Rule 13 (b) refers purely and simply to the issuance of the roster, and manifestly neither does nor can affect the actual seniority of the employe, other than as it may be a supporting record of such seniority. Any other interpretation of Rule 13 (b) would make it entirely possible for a majority group arbitrarily to grant or to withhold seniority from an employe purely on the basis of the roster, and without regard to facts or rules governing seniority. The provision for seniority rosters does not govern the employe's seniority rights; the roster is merely a reference record, which is to be revised and brought up to date each year, and such record is merely a convenient means of reference to the employe's actual seniority, as determined by agreement, by schedule, and by actual service, which agreements, schedule, and service govern to what extent such seniority has been acquired.

The carrier submits, therefore, that the request of the employes should be denied, for the reasons above shown: (1). That such seniority as a laborer was properly and legally acquired and is held and exercised under the terms of the original agreement entered into between the representatives of the employes and of the carrier. (2). The National Railroad Adjustment Board lacks authority thus to annul agreements, or to rescind seniority acquired thereunder. (3). The request is purely a discriminatory one, aimed at one individual employe out of a class, as no request has been made for any revision of rules, interpretations, or agreements governing such class of employes, and even in event of such request, both carrier and employes lack authority thus to retroactively reduce or to annul the seniority rights of an employe which were properly acquired; and the carrier submits that the Board should so hold.

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.

This dispute involves the alleged right of Machinist Potter to displace a laborer while furloughed as a machinist.

The agreement of September 1, 1937, now in effect, reads:

Rule 13 (h)—“Laborers promoted to positions of helper or outside hostler helpers retain their laborers’ rights while so employed.”

No showing was made that the employe in question retained his rights as a helper. To the contrary, it was admitted by both parties at the hearing that he relinquished his rights as a helper when promoted to the position of machinist.

While it is true that Machinist Potter was permitted to work as a laborer at various times when furloughed as a machinist, the express provisions of the present schedule do not so provide.

To permit Machinist Potter (when furloughed) to displace a laborer would not be in conformity with the provisions of the agreement now in effect.

AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of April, 1940.