

Award No. 605

Docket No. 635

2-CUT-SM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SHEET METAL WORKERS' INTERNATIONAL
ASSOCIATION,
RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L.
THE CINCINNATI UNION TERMINAL COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That Sheet Metal Worker David Cain, mechanical maintainer, The Cincinnati Union Terminal Company, Cincinnati, Ohio, have his seniority date changed to September 14, 1933, and be compensated for wages lost from April 4, 1938, on account of being improperly furloughed.

EMPLOYES' STATEMENT OF FACTS: David Cain was employed by the Cincinnati Union Terminal Company on April 2, 1933, as a tractor operator in the mail and baggage department. On May 16, 1933, was put back to a laborer, worked as laborer May 16, 1933 to June 1, 1933. On June 1, 1933, was transferred to electrician helper, mechanical maintainers' department.

On September 14, 1933, Mr. J. B. Royer, regularly assigned mechanical maintainer, laid off. David Cain was assigned to fill his place. On October 1, 1933 J. B. Royer laid off again and David Cain worked October 1, 1933 to October 11, 1933 in Royer's place. Supporting evidence of David Cain's service record is submitted in the form of a letter from the auditor of the company, marked Exhibit A.

On October 11, 1933, two new mechanics; namely, F. R. Cook and A. C. Pohlman were employed. These two men were not in any way connected with the Cincinnati Union Terminal prior to this time.

POSITION OF EMPLOYES: In supporting Rule 13, of our shop craft agreement, David Cain being in the service of the Cincinnati Union Terminal Company as a mechanic in the mechanical maintainers' department on and before October 11, 1933, claimed he should have been given preference in filling one of these jobs.

The Cincinnati Union Terminal Company's records show that on November 13, 1933, relief position No. 12 was advertised and this position was awarded to David Cain, which entitled him to seniority as a mechanic from the first day he worked as such, in supporting the past and present practice.

Supporting evidence of his claim is submitted, copy of a letter from J. J. Mellon, master mechanic, to Mr. C. W. Bick, under date of July 14, 1934, File 404-T, marked Exhibit B.

On September 20, 1934, the first seniority roster of the mechanical maintainers and mechanical maintainers' helpers was posted to the employees by

case. The carrier can not negotiate or interpret the general rules of the schedule (which apply to all crafts) with an individual or with one craft acting alone.

It has been a matter of definite agreement between the carrier and the system federation, through Rule 40 and mutual understandings, as to how the mechanical maintainer group shall be handled, from the time we first negotiated the present schedule in 1933. As evidence of such mutual understanding, we offer Exhibit H, a letter written by the chief operating officer to the general chairman of System Federation No. 150 on January 10, 1936, showing that men on the mechanical maintainer roster ranked among themselves in that work according to their mechanical maintainer seniority, and not according to their craft seniority. Exhibit I is the acknowledgment of the general chairman under date of January 17, 1936, concurring in this understanding.

As further evidence, we offer Exhibit J, copy of a formal interpretation of Rule 40, effective March 1, 1939, bearing the date of March 11, 1939, and spelling out the methods to be followed in increasing or decreasing the mechanical maintainer force.

We likewise disclaim the relevancy of Rule 64, which is a special rule of the sheet metal workers (classification of work).

Mr. Cain also referred to the fact that a pipe fitter by the name of Milton was given seniority by the carrier, after conference with the shop craft committee, as of the date he was first employed by the Terminal Company. There is no proper comparison; Mr. Milton did not work for the company as a helper, but was initially employed as a mechanic in the equipment department under entirely different circumstances.

The Carrier calls special attention to the fact that this dispute and submission is not sponsored by System Federation No. 150, but by the sheet metal workers' organization individually, and under contentions contrary to our understandings with the system federation.

Rule 40 is not properly subject to attack by one of the shop craft organizations acting alone, being a general rule of the schedule negotiated collectively with all the crafts represented by System Federation No. 150.

It will also be clear to the Board that the agreed application of Rule 40 as evidenced (first) by carrier Exhibits H and I, and (later) by Exhibit J, is controlling. The sheet metal workers' organization can not properly claim the application of special craft rules in conflict therewith. The carrier does not recognize that these features are before the Board, but only the question of the seniority date Mr. Cain should enjoy.

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 waived right of appearance at hearing thereon.

David Cain was assigned to position as mechanical maintainer on November 22, 1933, and was given this seniority rating. On October 25, 1934, he protested this seniority date. This protest was considered by representatives of management and System Federation No. 150, after which it was decided that he was given correct seniority date as of November 22, 1933.

The Railway Labor Act (as approved June 21, 1934) among its many provisions, prescribes:

“General Purposes

Sec. 2 * * * (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.”

Also:

“General Duties

* * * *

Second. All disputes between a carrier or carriers and its or their employes shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employes thereof interested in the dispute.”

This dispute was handled in accordance with the above provisions of the amended Railway Labor Act and properly settled between the duly authorized representatives of the employes and the carrier.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 3rd day of April, 1941.