

Award No. 641

Docket No. 585

2-B&M-MA-'41

**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. 18, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND MAINE RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: Request of Machinists' committee that the name of George S. Shaw be removed from the Billerica shops seniority roster of machinists.

JOINT STATEMENT OF FACTS: George S. Shaw shown on the Billerica shops seniority roster of machinists for 1939, as Item No. 14, entered service July 14, 1922. He has been carried on the payroll as a machinist and paid machinist's rate of pay since July 14, 1922, except when a foreman at Concord shops, January, 1927, to March, 1931.

He is a machinist, having for many years performed work of that trade but since about September 1, 1935, he has had a special assignment on which he did no actual work with tools or on the machines.

He has not been working away from Billerica shops since 1931.

The committee requested the management to remove Shaw's name from seniority list which request was declined.

The employees' claim was submitted to the National Railroad Adjustment Board. The point in the findings was:—

“There is sharp disagreement between the contending parties as to the seniority status of George S. Shaw on this special assignment.”

“The evidence as submitted in this case is such that the Division is unable to make a definite award.”

“**AWARD:** The contending parties are directed to endeavor to come to an agreement on the points stated in the ‘Findings.’ Failing to reach a settlement the case may be resubmitted to this Division with additional evidence.”

Correspondence and conferences have taken place since receipt of Award No. 461 in Docket No. 495, and the parties have agreed that work performed on this position which Shaw holds is as follows:—

Shop Order Duties—75%

Check and sort Shop Orders to Shop locations.

Record Shop Orders in Schedule Book to various machines.

be heard, attention is called to report of the Attorney General's Committee on Administrative Procedure of the National Railroad Adjustment Board identified as Monograph No. 17.

In one place in that report, under caption—"Notice"—it states:—

"Discharge or promotion or demotion may be at stake. Furthermore, as a practical matter the Board's decision will probably be binding even though there may be the theoretical possibility of obtaining judicial relief from an adverse decision. On this basis without more, some opportunity for presentation of the employees' side of the controversy by someone who will effectively represent their interests, seems desirable."

Further on, under the same caption, the report says:—

"Perhaps the best solution to the whole question is that the Board as a matter of policy and practice should take reasonable steps to give notice, especially where a single employe or a small group are importantly affected but that failure to bring notice home to every interested person should not be a ground for upsetting an award."

In a case like this of Shaw's, where a man's seniority of seventeen or eighteen years is threatened, he surely should have a right to his "day in court."

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.

George S. Shaw was a machinist and worked as such until September 1, 1935, on which date the carrier assigned him to a position that has been variously designated in the record. The facts are not precise and particular enough to permit a designation of the work now being done by Shaw. Because of the unusual conditions surrounding the work since September 1, 1935, and because of the circumstances under which Shaw accepted the assignment, it is here decided that he be given a full opportunity to re-instate himself on the machinists' seniority list by returning within thirty days from this date, June 26, 1941, to the work of machinist at Billerica shops. If within the thirty-day period Shaw does not return to the work of machinist and retains his present position, his name shall be removed from the machinists' seniority list at Billerica shop.

AWARD

Pursuant to the above Findings, Shaw shall have until July 26, 1941, to return to the position of machinist and thus fully restore his right of seniority to machinists' work at Billerica shop.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.