

Award No. 725

Docket No. 694

2-B&A-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

BOSTON AND ALBANY RAILROAD

DISPUTE: CLAIM OF EMPLOYEES: That Foreman Houser, Kenyon and Melaney, forfeited their seniority as mechanics, at former point when they accepted transfers to different points.

JOINT STATEMENT OF FACTS. A. Houser was employed as machinist at North Adams junction enginehouse, July 31, 1906; promoted to foreman and machinist at Chester enginehouse, December 25, 1916 and has since been employed as follows:

August	8, 1918	Foreman	Chester enginehouse
July	1, 1928	Enginehouse foreman	Selkirk enginehouse
August	1, 1931	Terminal foreman	Selkirk enginehouse
			*NYC
June	1, 1932	Assistant terminal foreman	Selkirk enginehouse
			*NYC
April	1, 1936	Night enginehouse foreman	North Adams Junction enginehouse
November 11, 1937		Enginehouse foreman	North Adams Junction enginehouse

Mr. Houser is carried on the machinists' seniority roster at North Adams junction enginehouse as of July 31, 1906.

C. Kenyon was employed at West Springfield shop as machinist July 29, 1911; promoted to enginehouse foreman at Palmer, April 15, 1924; enginehouse foreman at Chester, July 1, 1928, and night enginehouse foreman at North Adams junction, November 1, 1937.

Mr. Kenyon is carried on the machinists' seniority roster at North Adams junction enginehouse as of July 29, 1911.

R. J. Melaney was employed as machinist at West Springfield enginehouse, August 8, 1919; promoted to foreman at Palmer enginehouse, July 1, 1928, and foreman at Chester enginehouse, November 1, 1937.

Mr. Melaney is carried on the machinists' seniority roster at Chester enginehouse as of August 8, 1919.

*Boston & Albany and New York Central engine terminals consolidated.

1928 with respect to the application of Rule 19 on the New York Central. The employees insisted upon making the understanding retroactive on the B & A, but as it had not been applied in that manner on the New York Central, and the management was unwilling to agree to anything which would disturb the seniority of the three foremen involved, no satisfactory settlement could be reached.

The Employees' Committee requested that the case be submitted to the Second Division, National Railroad Adjustment Board."

In handling this particular claim, the employees have prosecuted it alternately under the provisions of Rules 20 and 19. The first claim was presented under Rule 20 and it is shown that a tentative agreement was reached to dispose of the claim on the basis of extending the New York Central interpretation on Rule 19 to the Boston and Albany. However, because they were not willing to apply the interpretation on the Boston and Albany in the same manner it had been applied on the New York Central, the employees again sought refuge under Rule 20.

The Board's attention is directed to the fact that prior to adoption of the April 6, 1928 interpretation to Rule 19 on the New York Central, Rule 19 had been applied in various ways. The New York Central Management was unwilling to agree to anything which would disturb the seniority of individuals who had acquired their seniority under various applications of the rule and for this reason would not agree to make the interpretation retroactive. As evidenced by Secretary Rieber's letter of May 28, 1928, quoted under Item 2, the shop crafts' committee agreed to make the New York Central interpretation to Rule 19 effective April 6, 1928, and withdrew the cases pending under the rule. The situation which prevailed on the Boston and Albany prior to the exceptions taken by the employees subsequent to the posting of the January 1, 1938 seniority rosters, was exactly the same as that which obtained on the New York Central prior to April 6, 1928. It is not unreasonable, therefore, to contend that the interpretation to Rule 19 should be given the same application on the Boston and Albany as on the New York Central.

4. MESSRS. HOUSER, KENYON AND MELANEY ACCEPTED THE TRANSFERS FROM ONE POINT TO ANOTHER ON THE ASSUMPTION THEY WOULD RETAIN THEIR FULL SENIORITY AND TO NOW DEPRIVE THEM OF THAT SENIORITY WOULD BE A GRAVE INJUSTICE.

As explained in Item 2, there was no agreed upon interpretation of Boston and Albany Rule 19 prior to the time the present controversy arose. The seniority of the three foremen herein involved was established in accordance with the provisions of the rule as interpreted by the officers under whose jurisdiction they were employed. There are other instances on the Boston and Albany where the rule has been applied so as to deprive individuals affected of their seniority when transferred from one point to another. In these instances the individuals so transferred were fully aware of the fact that their seniority would be forfeited and the transfers were accepted under those conditions.

On the other hand, Foremen Houser, Kenyon and Melaney accepted their transfers with the understanding they would retain their full seniority as mechanics and there is no justifiable reason for depriving them of that seniority at this time.

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.

Rule 20 of the Boston and Albany shop craft agreement applies, which provides that employes transferred from one point to another with a view of accepting a permanent transfer will after thirty (30) days lose their seniority at the point they left and their seniority to the point where transferred will begin on date of transfer, seniority to govern. There is nothing in this rule that excepts a foreman, the rule providing that it covers all employes.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.