

Award No. 738

Docket No. 747

2-CRI&P-FO-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**INTERNATIONAL BROTHERHOOD OF FIREMEN AND
OILERS, HELPERS, ROUNDHOUSE AND
RAILWAY SHOP LABORERS**

**THE CHICAGO, ROCK ISLAND AND PACIFIC
RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYES: What are the correct seniority dates as stationary firemen of Tony Conty and Martin McQuaid, 47th Street shops, Chicago, Illinois.

CARRIER'S STATEMENT OF FACTS: In November, 1937, a vacancy, as stationary fireman at 47th Street shops, Chicago, occurred.

Employes filling positions of stationary firemen in the city of Chicago must have a city license. Mr. Tony Conty, holding seniority date as power plant laborer of August 21, 1936, being qualified for this position by having a city license, was promoted to a stationary fireman position on November 25, 1937.

Mr. Martin McQuaid, holding power plant laborer's seniority date of November 17, 1933, at 47th Street, Chicago, was from November 15, 1937, to and including December 20, 1937, working as a power plant fireman at 124th Street shop, Blue Island, a seniority point separate from 47th Street, Chicago.

At the time Mr. Conty was placed on the stationary fireman position at 47th Street, November 25, 1937, Mr. McQuaid did not have a license from the city of Chicago to permit him to act as stationary fireman at 47th Street. Mr. Conty, who did have a license, was promoted. Mr. McQuaid subsequently secured a license and was placed on a stationary fireman position on December 20, 1937 at 47th Street, Chicago.

Neither of these employes was carried on stationary firemen's seniority rosters of January 1, 1938, January 1, 1939, or January 1, 1940.

In June, 1940, a dispute arose as to their seniority dates as stationary firemen at Chicago, and through correspondence and conferences with Mr. C. R. Langhofer, general chairman of the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers, the duly authorized representative, under the Railway Labor Act, amended, of stationary firemen, it was agreed between the said organization and the management, that Mr. Conty was entitled to a stationary fireman seniority date of November 25, 1937, and Mr. McQuaid a stationary fireman seniority date of December 20, 1937, the dates on which each of them first worked as stationary firemen at 47th Street, Chicago. They were shown with the above dates on the seniority roster of January 1, 1941.

bid upon and that he would have ample opportunity to make such bid and ready himself for the assumption of such position. Subsequent to November 25, 1937, Mr. McQuaid's position was confirmed by the recognition of the carrier of his seniority over Mr. Conty until June 8, 1940, when to his complete surprise, Mr. Conty's seniority was apparently established by the carrier as having been prior to Mr. McQuaid's.

The action of the organization in this matter, in taking a stand for Mr. Conty and against Mr. McQuaid, does not seem proper, in view of the fact that on November 25, 1937, the said organization had no jurisdiction over the 47th Street plant or its employes, and did not acquire jurisdiction until sometime after that date. The responsibility of fixing the seniority dates should be left solely between the carrier and the employes.

In the conversations and conferences between Mr. McQuaid's attorney, Mr. Robert W. Rice, and the attorney for the carrier, there was acknowledged by the carrier that there did not seem to have been any real basis for determining seniority by pay date on the job and no evidence of such determination of seniority was produced nor could be produced by the carrier.

Since June 8, 1940, Mr. McQuaid has maintained a constant opposition to the assumption of Mr. Conty's seniority and did appeal to the company at that time and continuously since then, and was required to obtain the services of an attorney, Mr. Robert W. Rice, for the purpose of obtaining further hearings on the matter and ultimately obtaining for Mr. McQuaid the seniority and position, which he justly deserves.

The carrier and the organization have not made out in their statements any justification for the recognition of Mr. Conty's seniority over Mr. McQuaid for the position of stationary fireman at 47th Street. Mr. McQuaid, therefore, appeals and prays for a determination of this matter and for a finding by the Board that Mr. McQuaid had and has prior seniority over Mr. Conty for the position of stationary fireman at 47th Street, and that the Board enter such order as it may deem fitting and proper, in recognition thereof, in accordance with the Railway Labor Act, thereby granting to Mr. McQuaid whatever rights and privileges he may be entitled to thereunder.

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.

Representatives of the carrier and general chairman of the International Brotherhood of Firemen and Oilers, Helpers, Roundhouse and Railway Shop Laborers reviewed the records of Messrs. Conty and McQuaid and from such determined their seniority dates, which this Division can find no grounds for disturbing.

AWARD

Correct seniority date of Stationary Fireman Tony Conty is November 25, 1937; that of Martin McQuaid is December 20, 1937.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 8th day of April, 1942.