Award No. 785
Docket No. 711
2-T&P-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. 121, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (MACHINISTS)

THE TEXAS AND PACIFIC RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That the carrier at Big Spring, Texas, on May 9, 1941, violated Rule 20 (f) and Rule 21 (a) in temporarily assigning Class B Machinist M. H. Hoover, to fill vacancy of a Class A machinist.

(b) That Class A Machinist M. J. Dehlinger be compensated at rate and one-half for eight (8) hours on May 9, 1941, on account of the aforesaid violation.

EMPLOYES' STATEMENT OF FACTS: Two Class A machinists, on the third shift, at Big Spring, Texas, were off on the night of May 9, 1941, and Class B Machinist M. H. Hoover was assigned to fill one of said vacancies.

Class A Machinist M. J. Dehlinger, is employed at Big Spring, Texas, on the first shift and was available for service on the third shift May 9, 1941.

POSITION OF EMPLOYES: At the outset it is regarded significant to affirm the employes' statement of facts by submitting herewith Exhibit A, Mr. Mulholland's letter of July 16, 1941, to Mr. Prendergast and Exhibit B, Mr. James' letter to Mr. Mulholland of September 9, 1941. The employes assert that the carrier at no time in correspondence or conference has denied using on May 9, 1941, Class B Machinist Hoover in place of a Class A machinist, or that Class A Machinist Dehlinger was not available or unwilling to serve in vacancy filled by Class B machinist on May 9.

In respect to the carrier contending that Mr. Hoover was used on May 9 in place of a journeyman machinist within the meaning of the agreement of May 17, 1938, referred to in our Exhibit B, the employes desire to emphasize that said agreement was consummated for the sole and exclusive purpose of avoiding seniority complications by reason of employes laid off at one point used in the service at other points. This said agreement does not, by any stretch of the imagination, legalize any employe filling any vacancy in violation of any rule of the agreement, effective April 1, 1937. As a matter of fact, said supplemental agreement has operated in the reverse order in that it has deprived employes of rights duly earned in the service while working

(6) Employes working temporarily in place of other employes establish no seniority while so temporarily assigned.

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.

That the carrier on May 9, 1941, violated the rules of the current agreement in temporarily assigning Class B Machinist Hoover to fill vacancy of Class A machinist.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1942.