

Award No. 1173

Docket No. 1120

2-CRI&P-MA-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 6, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY (Joseph B. Fleming & Aaron Colnon, Trustees)**

DISPUTE: CLAIM OF EMPLOYEES: That it was inconsistent with the former and the current agreements to re-employ Machinist George W. Marley in the service on March 23, 1945, at Shawnee, Oklahoma, with his prior rights restored, and accordingly, the carrier be ordered to cancel said restoration of seniority rights.

EMPLOYEES' STATEMENT OF FACTS: Prior to January, 1939, the carrier maintained a large back shop and roundhouse force at Shawnee, Oklahoma. The machinists' seniority roster at this point included machinists both in the roundhouse and the back shop.

On January 31, 1939, a reduction in force was made at Shawnee. As a result of this reduction in force only three machinists' positions remained in the roundhouse, one on each of three shifts, and approximately thirty machinists remained in the back shop. Prior to this reduction in force, Machinist George W. Marley, No. 6 on the 1939 seniority roster, had been assigned as engine inspector in the roundhouse. As a result of the reduction in force it became necessary that the machinists employed in each shift in the roundhouse make all necessary repairs to locomotives in addition to the inspection of locomotives. The job of engine inspector was in this way abolished. Mr. Marley being only an engine inspector and unable to handle the repair work required of a machinist, was furloughed in the January 31 reduction in force. Junior machinists were retained in service at Shawnee following this reduction in force; however, Machinist Marley made no effort to displace them.

In May of 1939, a job of lead machinist was created at Shawnee. Mr. Marley was advised of this job, placed a bid, and was assigned on May 3, 1939. On May 6, 1939, Mr. Marley disqualified himself by giving the general foreman a statement saying that he was qualified to do the inspection but was unable to perform some of the machinist work required of him. Mr. Marley left the service of the carrier on May 8, 1939, leaving no address with General Foreman Geo. H. Pretty, the officer in charge, nor with the local committee. Nothing more was heard of Mr. Marley until March 23, 1945.

In March of 1945, Machinist Seaborn Perry, No. 11 on the seniority roster and junior to George Marley, took his pension. A letter dated March

Engine inspectors are included in the machinist classification, Rule 53, of the aforementioned agreement and are carried on the same seniority roster as machinists.

Shawnee, Oklahoma, is now only a servicing point, no heavy repairs being made there, and Mr. Marley, upon returning to service in March, 1945, was able to perform the character of work now performed at that point.

Rule 30 of the agreement of October 1, 1935, contained the following provision:

“The seniority lists will be prepared from the Railway’s record on January 1st of each year and will be posted and open for inspection for a period of sixty (60) days. Copies of such lists will be submitted to the General Committee.”

The general committee representing the A. F. of L. shopmen agreed that a notation would be placed on all seniority rosters reading:

“The seniority date shown hereon will be opened to protest for a period of thirty (30) days from date of posting and upon presentation of proof of error by employe or his representative, such error will be corrected. If no protest is made within the thirty-day period, the dates as posted will govern and will not be subject to change.”

Later an agreement was concluded providing that the thirty-day period would be extended to sixty days in which to make protest in the manner provided in Rule 30. This provision, establishing a sixty-day period instead of the thirty-day period, was continued in effect under the September 15, 1941, agreement and has appeared on all seniority rosters posted at Shawnee during all years in question.

This notation on the seniority rosters is in accordance with the following provision of Rule 26 of the agreement of September 15, 1941:

“The seniority lists will be prepared from the Railway’s record on January 1st of each year and will be posted and open to protest for a period of sixty (60) days from date of posting. Protests on seniority dates for correction will be confined to names added since posting of previous annual rosters, except to correct typographical errors.”

As stated above, the first protest concerning Marley’s name appearing on the rosters was made in 1945, by Machinist Gordon, a junior employe, was after Mr. Marley’s return to service.

The records at Shawnee show that Mr. Marley left his address each time it was changed as indicated in the carrier’s statement of facts.

Irrespective of whether or not Mr. Marley’s record and seniority received proper or improper handling in 1939 and subsequent thereto, nevertheless, the carrier is not at liberty under the provisions of Rule 26 of the controlling agreement to remove Mr. George W. Marley’s name from the seniority roster. In this connection we respectfully refer the Board to its Award 314.

With a view to compliance with the Board’s Circular B we submit herewith, as carrier’s Exhibit A, a copy of that portion of the seniority roster of machinists at Shawnee, Oklahoma, revised to January 1, 1946, which includes the name of George W. Marley and all machinists on that roster with dates junior to Mr. Marley.

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.

The carrier and employe representatives did not carefully administer the matter of preparing and compiling a proper seniority roster each year under the peculiar conditions and circumstances existing at Shawnee, following the shops being abandoned.

Had more care been exercised this case probably would not now be here. However, rosters were posted each January and the employes did not invoke the provisions of Rule 26, to correct any alleged or actual inaccuracies.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 6th day of March, 1947.