

Award No. 1193

Docket No. 1130

2-SAL-MA-'47

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee George A. Cook when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 39, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (MACHINISTS)**

SEABOARD AIR LINE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Machinist E. L. Thomas was entitled to employment as such on June 23, 1944 in lieu of October 2, 1944, at Miami, Florida, and that accordingly the carrier be ordered to reimburse him for all time lost in the amount of \$848.35.

EMPLOYEES' STATEMENT OF FACTS: Machinist E. L. Thomas, hereinafter referred to as the claimant, was employed by the carrier at Hamlet, North Carolina. However, due to the poor health of his wife in Miami, Florida, the claimant requested the privilege of transferring to Hialeah shop at Miami, Florida. This request was granted by the appropriate carrier officer at Hamlet, and the claimant proceeded to Miami where he could be with his ill wife outside of his regular hours of work, and who reported for duty thereat on June 23, 1944, with the result that the management declined to put him to work until Monday, October 2, 1944. In the meantime, however, the carrier continued to use two previously promoted machinist helpers as temporary machinists, namely: D. O. Woodard, until July 18, 1944, when on that date he established seniority as a machinist; and H. R. Knight, until October 13, 1944, when on that date he established seniority rights as a machinist. This is substantiated by copy of the seniority roster submitted and dated March 24, 1946, identified as Exhibit A.

These aforesaid helpers were promoted or progressed to the status of permanent machinists under the Memorandum of Understanding dated at Norfolk, Virginia, January 4, 1944, copy of which is submitted and identified as Exhibit B.

This dispute has been handled in accordance with the collective agreement effective March 10, 1923, up to and with the highest carrier officer to whom such matters are subject to appeal, with the result that said officer on more than one occasion has declined to adjust this dispute.

POSITION OF EMPLOYEES: It is submitted that this claimant is a journeyman machinist with many years' experience as such, and was an employe of the carrier subject to continuous employment by the carrier during the period stipulated in the statement of claim.

Moreover, this claimant was an employe of the carrier subject to all of the terms of the master agreement, effective March 10, 1923, and by virtue

he was, in effect, saying:

“If Mr. Wood has a vacancy for a Machinist at Miami, which Mr. Thomas is qualified to fill, and it is the desire of Mr. Wood to employ Mr. Thomas for this vacancy, then I will release him.”

As previously pointed out, actually, Mr. Thomas was not released from his assignment at Hamlet until the day he was permitted to go to work at Miami and for that reason, if no other, he was not available for a position at Miami.

In conclusion, we point out the fact that had we permitted an unqualified machinist, such as Claimant Thomas, to displace either of the two qualified promoted helpers, then we would have been guilty of violating the agreement and more than likely such action on our part would have resulted in a time claim. In other words, under the rule, it was only permissible for us to displace the promoted helpers when qualified mechanics became available, and, to displace these promoted helpers with an **UNQUALIFIED MECHANIC**, such as Claimant Thomas, would have been a clear-cut violation of the agreement.

For the above reasons, the carrier respectfully requests that the claim be denied.

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.

It was developed and agreed at the hearing in this case, with referee present, that the question of qualifications need not now be considered in making an award; the award to be based on the application or meaning and intent of the paragraph numbered 2 of the upgrading agreement dated January 4, 1944, and the rules of the working agreement, Rule 25, et al.

With the question of qualification not to be considered, it is clear, that under the spirit and intent of the upgrading agreement—and the approval of release for transfer by the master mechanic at Hamlet, account illness of Mr. Thomas' wife in Miami, that Mr. Thomas should have been employed or transfer completed at Miami in June instead of October.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 14th day of May, 1947.