

Award No. 1330

Docket No. 1263

2-TC-FO-'49

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION No. 68, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Firemen & Oilers)**

**TENNESSEE CENTRAL RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYES:** 1—That the substitution of an employe from the maintenance of way department for an employe in the firemen and oilers' class to fill vacancies of stationary firemen from 3 P. M. to 11 P. M. on May 1, and 11 P. M. to 7 A. M. on May 2, 1948, was improper under the current agreement.

2—That accordingly the carrier be ordered to additionally compensate Engine Watchman Robert Wright on May 1, and Engine Watchman Henry Burgess on May 2, 1948, for the aforesaid work, each in the amount of eight hours at the applicable current agreement rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** The carrier maintains at Nashville, Tennessee, three shifts of stationary firemen in the power plant, one each from 7 A. M. to 3 P. M., 3 P. M. to 11 P. M., and 11 P. M. to 7 A. M.

On May 1, 1948, the second shift stationary fireman was absent, and on May 2, 1948, the third shift stationary fireman was absent. The carrier filled these vacancies with a section laborer, whose regularly assigned hours were from 7 A. M. to 3 P. M.

The carrier also employed Robert Wright and Henry Burgess, hereinafter referred to as the claimants, as engine watchmen. Claimant Wright's regular job was from 7 A. M. to 3 P. M., and he was available to protect the vacancy of the stationary fireman from 3 P. M. to 11 P. M. on May 1, 1948. Claimant Burgess was working from 7 A. M. to 3 P. M. on May 2, and he was available to protect the vacancy of the stationary fireman from 11 P. M. on May 2 to 7 A. M. on May 3, 1948.

The agreement effective January 1, 1944, as subsequently amended, is controlling.

**POSITION OF EMPLOYES:** It is submitted that there is nothing expressed, implied or contemplated in the aforementioned controlling agreement which authorized the carrier to unilaterally substitute any Maintenance of Way employe or section laborer for firemen and oiler employes to fill the vacancy of the stationary fireman on the second shift or to fill the vacancy of the stationary fireman on the third shift on the dates of May 1 and 2, 1948.

on that position for a short period of time, he neglected to keep boiler supplied with sufficient water, resulting in explosion and actual damage of \$1,800.00. He was relieved with another sub-division (b) employe who had a similar experience just three days later, which placed both boilers out of commission, causing serious inconvenience and inefficiency in the operation of our main repair shops, as well as an enormous additional expense by make shift arrangement for furnishing steam, heat, air and hot water by the use of a locomotive for months thereafter. Rules 13 (a) and 14 grant carrier right to use sub-division (b) employe on sub-division (a) work, but does not require it.

Employes appear to be of the opinion that an engine watchman is qualified to be a stationary fireman, but the difference in their duties was explained, and further, it was pointed out that an engine watchman is under direct supervision practically all his working time, whereas a stationary fireman is pretty well on his own responsibility. Employes obviously want to dictate the class of employes to be used as stationary firemen, the agreement rules to the contrary notwithstanding, but refuse to take any responsibility for the damage they may cause to life and limb and expensive equipment. Carl Toy, about whom this complaint is made, is a qualified stationary fireman; and there is no showing nor claim made that Complainants Wright and Burgess are qualified for such position.

The carrier respectfully asserts that the rules of the applicable agreement support in every respect its position and that in no wise do they support the contentions of employes. The carrier, therefore, respectfully requests that your Honorable Board deny the claims.

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**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 sole issue before us for decision is the right of these claimants to compensation for the carrier's failure to assign them to fill temporary vacancies occurring for a period of two shifts.

We find under Rule 9 of the current agreement between the parties, that seniority rights are expressly confined to the point of employment and to each of the several sub-divisions set forth therein. Under the rule as written, claimants, holding seniority rights in sub-division (b), have no special rights in support of their claims to the sub-division (a) vacancy in question.

#### AWARD

Claims denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 5th day of August, 1949.

**DISSENT TO AWARD NO. 1330**

The undersigned dissent from the above majority decision of the Second Division of the National Railroad Adjustment Board in award No. 1330.

The majority findings and award improperly ignore the controlling agreement; as a whole it fails to take into consideration all applicable rules which govern the dispute; such failure leads to a misinterpretation of the said agreement. The award is predicated upon Rule No. 9, which reads:

**“Rule 9.—Seniority Limits**

Seniority will be restricted to the point where employed and sub-divided as follows:

- (a) Stationary firemen;
- (b) Employes in the Locomotive Department other than stationary firemen;
- (c) Employes in the Car Department other than stationary firemen;
- (d) At any point other than Nashville, employes will be considered as one group.”

It will be noted this rule simply sets out the seniority of the several sub-divisions.

Rules No. 10 and 13 reading:

**“Rule 10.—Seniority Rosters**

Seniority rosters will be compiled for each point of employment showing names and seniority date of employes by sub-divisions. Rosters will be revised in January of each year and will be open for correction for a period of sixty (60) days thereafter. Any dating which remains unchanged on two rosters will not be open to question. Copies will be furnished local committee and General Chairman and be available for inspection of employes concerned.

Note: For convenience, employes other than at Nashville, Monterey and Emory Gap may be included in one roster.”

**“Rule 13.—Promoted or Transferred**

(a) Employes promoted or transferred from one sub-division to another will rank in such sub-division from date of transfer, but will continue to accumulate seniority in the sub-division from which transferred or promoted, and may exercise displacement rights in said sub-division when affected by force reduction or positions abolished. The practice of bumping or rolling not permitted.

(b) Employes promoted to supervisory positions beyond the scope of this agreement will retain their seniority rights at the point and in the sub-division from which promoted, except in the event of discharge from such supervisory position for cause the rules of this agreement will not apply.”

should have been given consideration also, as they implement Rule No. 9. They demonstrate very definitely and very clearly that employes within the scope of the controlling agreement, which covers those involved in this dispute, have prior rights to work coming under the scope of the aforementioned agreement.

Rule No. 11 is a promotion rule which gives all employes coming within the scope of the agreement the right to bid on the vacancies mentioned in the rule. This fact of itself is sufficient to show the contractual rights of the employes.

Rule No. 13 provides for the installation of a dual seniority when employes are promoted or transferred from one sub-division to another. This also proves the community of interest between the sub-divisions and creates a definite relation between them.

The apparent unwillingness of the majority to give fair consideration to all facts and circumstances definitely wrongs the employes involved and arbitrarily and unduly limits their contractual rights.

/s/: R. W. Blake  
A. C. Bowen  
T. E. Losey  
E. W. Wiesner  
George Wright