

NATIONAL RAILROAD ADJUSTMENT BOARD
Third Division

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE.—“Claim of Mr. I. E. Weidman for recognition by the Carrier as being senior to and holding rights over Mr. W. C. Nicholson in the classification of water service repairman, Central Division.

“(b) Claim of Mr. Weidman for compensation covering all time lost—less any amount earned in or out of the service—from February 1, 1934.”

FINDINGS.—The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier and the employees involved in this dispute are respectively carrier and employees 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.

An agreement bearing date of January 1, 1928, is in effect between the parties.

The parties have certified the following “Joint Statement of Facts”, and the Third Division so finds:

“Effective February 4, 1934, carrier reduced force of water service repairmen, Central Division, displacing I. E. Weidman. Following are service records of Messrs. W. C. Nicholson and I. E. Weidman:

Service Record of W. C. Nicholson

Dates of employment		Class in which employed
From—	To—	
5-1918.....	1-1919.....	Water Service Helper.
2-1919.....	6-1919.....	Carpenter Helper.
7-1919.....	7-1922.....	Water Service Helper.
9-1922.....	11-1922.....	Do.
11-1922.....	12-1922.....	Water Service Repairman.
1-1923.....	7-1927.....	Motor Car Repairman.
8-1927.....	Date.....	Water Service Repairman.

Service Record of I. E. Weidman

6-1923.....	8-1923.....	Water Service Helper (temporary).
7-1923.....	4-1924.....	Pumper (temporary service).
9-1923.....	7-1925.....	Pipefitter Helper (shops).
5-1924.....	2-1934.....	Water Service Helper.
7-1925.....		Water Service Repairman—relieved account reduction in force.

Prior to February 4, 1934, the water service repairmen organization on the Central Division (one seniority district) consisted of:

Name	Headquarters	Seniority date ¹
J. C. Nicholson.....	Van Buren, Ark.....	4-1-03
W. C. Nicholson.....	Russellville, Ark.....	5-1-18
I. E. Weidman.....	Wagoner, Okla.....	10-1-22

¹ District as shown on seniority roster compiled as of January 1, 1934, and bearing approval of the Carrier's Division Engineer, Superintendent, and the Employees' representatives, i. e., Division Chairman, M. of W. Employees.

Effective February 4, 1934, one of the water service repairmen positions (Wagoner, Oklahoma) was abolished and territory of the remaining two men reassigned to fulfill requirements of the service.

Mr. Weidman, being the junior of the three employes of this class on that seniority district as reflected by the seniority roster then in effect, was displaced under the following schedule rule of the wage agreement:

"REDUCING FORCE—RULE 3, Par. (a): When force is reduced, the senior man in the subdepartment, on the seniority district, capable of doing the work, shall be retained."

I. E. Weidman, the claimant in this dispute, thereupon contended that he should be assigned to the position of motor-car repairman created on or about the same date, February 4, 1934, he being senior to the employee who was at that time appointed to the position. Upon being advised that the carrier would not agree to a change in this assignment on the grounds that the positions of water-service repairman and motor-car repairman were separate units in the subdepartment, and he (Weidman) lacked seniority as motor-car repairman, the claim made subject of this dispute was instituted, except that part (b) of said claim was not presented to the carrier prior to submission of same to the Adjustment Board, and the Carrier has accordingly challenged the right of the Adjustment Board to make an affirmative award thereon.

The service records above quoted show that during the period January 1923 to July 1927, W. C. Nicholson served as motor-car repairman and that as of July 1925, I. E. Weidman was promoted to water-service repairman, serving continuously until relieved account reduction in force February 1934.

It was understood by both parties to this dispute that the classification of employes on the seniority roster respectively as water-service repairman and motor-car repairman prohibited any employee to accrue seniority in one of these classes while filling a position of the other class.

I. E. Weidman under date of February 15, 1928, protested the seniority dates showing him to be junior to W. C. Nicholson after the first posting of such dates following the return of the latter from the position of motor-car repairman to that of water-service repairman in July 1927, and that though he was then advised that the correction would be made, it was not done.

Subsequent seniority lists continuing to show I. E. Weidman junior to W. C. Nicholson were not protested again until May 3, 1933, at which time Weidman was advised that his protest was disclaimed as the same date had been thus shown for the past three years without protest. Similarly, no action was taken on later protests dated January 4, 1934, and January 24, 1935.

The following rules in the agreement effective January 1, 1928, also have been cited by the parties as being applicable, and the Third Division so finds:

"SENIORITY—RULE 2 (a). Seniority begins at the time the employee's pay starts. Rights accruing to employes under their seniority entitle them to consideration for positions in accordance with their relative length of service with the railroad."

"SENIORITY ROSTERS—RULE 4. (a) Seniority roster of employes of each subdepartment by seniority districts will be separately compiled, and will show name, classification, when employed and date of promotion.

"(b) Rosters will be revised in January of each year and open to correction for a period of ninety (90) days thereafter.

"(c) Seniority dates shall be considered permanently established if not protested within ninety (90) days from time of first posting."

It is found that while W. C. Nicholson entered the service of the carrier in 1918, approximately five years prior to the time that I. E. Weidman was first employed, and is shown on the seniority list as of January 1, 1934, as water-service repairman with seniority date of May 1, 1918, thus being shown senior to Weidman, he (Nicholson), by reason of his service as motor-car repairman during the period which ended in July 1927 became junior to said I. E. Weidman, and the Third Division finds that by reason thereof I. E. Weidman is entitled to the position of water-service repairman now held by W. C. Nicholson.

AWARD

Claim of I. E. Weidman for recognition by the Carrier as being senior to and holding rights over Mr. W. C. Nicholson in the classification of water-service repairman, Central Division, is sustained.

(b) In view of all the circumstances surrounding this claim, the claim for time lost is denied.

By Order of Third Division:

NATIONAL RAILROAD ADJUSTMENT BOARD.

Attest:

H. A. JOHNSON,
Secretary.

Dated at Chicago, Illinois, this 9th day of July 1935.