

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY

STATEMENT OF CLAIM: "That H. L. Wooldridge lost his seniority rights as frog repairer and helper in the Maintenance of Way Department, on the Eastern Division of the St. Louis-San Francisco Railway Company when he transferred to the Engineering Department on April 15, 1935, and remained in the Engineering Department over thirty days, when his seniority would have permitted him to have continued working in the Maintenance of Way Department as frog repairer and helper."

JOINT STATEMENT OF FACTS: "Mr. H. L. Wooldridge entered the service of the St. Louis-San Francisco Railway Company as a civil engineer June 16, 1927. Account reduction in force he was unable to continue in service in that Department and was placed in service as frog repairer helper Eastern Division February 2, 1931. He was promoted to frog repairer July 31, 1933. He continued in such employment until April 15, 1935, when he was placed as instrumentman, office of Assistant Chief Engineer, Springfield, Missouri. He has been continually in service on such position since that date and is on the position at this time.

"Frog repairers are covered by Agreement with the Maintenance of Way employees and were placed under such Agreement effective August 15, 1934. They hold Division seniority rights.

"H. L. Wooldridge while working as frog repairer helper and as frog repairer was carried on Eastern Division seniority list with seniority as helper February 2, 1931, and seniority as frog repairer July 31, 1933. He was shown on Eastern Division frog repairer's seniority roster with these dates from the date rosters were first issued, and has been shown on all rosters issued up to and including the present time."

POSITION OF EMPLOYEES: "Frog repairers and helpers are covered by agreement governing hours of service and working conditions between the St. Louis-San Francisco Railway Company, St. Louis, San Francisco and Texas Railway Company, and the Brotherhood of Maintenance of Way Employees, effective September 1, 1937, and are set out in the scope of the agreement as Lead Rail End Welders; Rail End Welders, Rail End Welder Helpers, Rail Joint Grinders, Rail Joint Grinder Helpers; Frog Repairers, Frog Repairer Helpers. These employees were brought into the Scope of the Maintenance of Way Agreement on August 15, 1934, and have been represented by the Brotherhood of Maintenance of Way Employees since that date.

"As set out in the Joint Statement of Facts, Mr. H. L. Wooldridge was employed as frog repairer helper and frog repairer on the Eastern Division on the effective date of the agreement bringing them under the Maintenance of Way agreement. He continued in that capacity until April 15, 1935, when

argument to support their position, merely making the statement that they do not consider it covered by this rule, but covered by Rule 26, Article II.

"The duties on position of instrumentman, office of Assistant Chief Engineer, now being filled by Mr. Wooldridge are as follows:

Make all kinds of surveys
Work up new maps and prints
Work including industry tracks, drainage
surveys, surveys for grade separation
projects and various other sorts of smaller
engineering projects

"The position of instrumentman does not come within the scope of Agreement with any labor organization. The position is not subject to any seniority rules and is not bulletined when vacant. It is filled by appointment. The only rule employees have quoted to support their position is Rule 26, Article II, which reads as follows:

'Employees transferred from one department to another shall have thirty (30) days in which to qualify, qualifying and remaining therein over thirty (30) days, shall lose all seniority rights in the department in which formerly employed.'

"Article II of the Agreement is headed 'Seniority Datum', and has to do entirely with seniority rights. This rule is intended to cover transfer of employees covered by the Agreement to positions in other Departments which are covered by Agreement and subject to seniority rules. The position of instrumentman is one devoted exclusively to track and building work or exactly the same class of work which is performed by employees in the Maintenance of Way Department. It is an excepted position.

"Rule 9, Article III, has been in the Agreement between the Frisco Railway and Maintenance of Way Organization since July 1, 1921. It will be noted in the joint statement of facts that Mr. Wooldridge was appointed instrumentman April 15, 1935. Seniority rosters for frog repairers and frog repairer helpers are issued in January of each year. Mr. Wooldridge's name was included on the seniority rosters issued January 1, 1936, January 1, 1937, and January 1, 1938. No protest was made against his name being carried on seniority roster until General Chairman Brotherhood of Maintenance of Way Employees Organization handled with Division Engineer on July 13, 1937. Division Engineer declined to remove Mr. Wooldridge's name from the seniority roster. Matter was not again handled until February 15, 1938, when General Chairman Maintenance of Way Organization again handled with Division Engineer.

"Order of the Interstate Commerce Commission February 5, 1924, in case Ex Parte No. 72, regulations designating the classes of employees that are to be included within the term 'subordinate official' under Title III of the Transportation Act, 1920, includes the following paragraph concerning Engineering Department personnel:

TECHNICAL ENGINEERS. This class shall include civil, mechanical, electrical and other technical engineers inferior in rank to engineers of maintenance of way, chief engineers and division engineers; engineers of maintenance of way and other technical engineers. We are of the opinion that instrumentmen, rodmen, chainmen, designers, draftsmen, computers, tracers, chemists and others engaged in similar engineering or technical work are not "officials of carriers." "

OPINION OF BOARD: Both parties are in agreement that position of Instrumentman is not covered by Maintenance of Way or any other agreement. The question involved is whether the occupant of such position re-

tains his seniority as Frog Repairer, under Article 3, Rule 9, of Agreement between the parties. It is conceded not to be an Official position. Evidence of record, however, shows that in previous settlements between these parties, it was agreed that under the circumstances here involved, an employe would not retain his seniority under the Maintenance of Way Agreement.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the name of H. L. Wooldridge shall be removed from seniority roster of Frog Repairers.

AWARD

The name of H. L. Wooldridge shall be removed from seniority roster of Frog Repairers.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of September, 1938.