

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

ATLANTIC COAST LINE RAILROAD

STATEMENT OF CLAIM: "Claim of M. W. Peel, welding foreman operator, Southern Division, first; that he shall be assigned as foreman operator to welding gang No. 201 on the Southern Division.

"Second; that he be paid for time lost since October 2, 1939 on account of being denied assignment as welder foreman operator."

EMPLOYEES' STATEMENT OF FACTS: "M. W. Peel entered the service on the Southern Division, August 31, 1922, was appointed foreman October 4th, 1922, and continued in the service as such up to and including August 31, 1939. On August 31, 1939, welding gangs Nos. 1 and 2, Southern Division, were laid off. On October 2d, 1939, welding gang No. 201 was established on the Southern Division. Mr. Peel, being the senior welder foreman, sought to exercise his seniority rights for assignment as foreman on welding gang No. 201. He was denied that right, and a junior welding foreman, W. H. Colson, with seniority rights as of July 1, 1928, was assigned."

POSITION OF EMPLOYES: "As stated in Employees' Statement of Facts, welding gangs Nos. 1 and 2, Southern Division, were laid off August 31, 1939, and welding gang No. 201 was assigned on October 2d, 1939,—see letter pertaining thereto addressed to the General Superintendents by Chief Engineer J. E. Willoughby, under date of August 30, 1939, Employees' Exhibit 'A.'

"As will be observed from Mr. Willoughby's letter, wherein he issued instructions pertaining to rearrangements of gangs, he stated in part: 'All employes to exercise seniority.' In so stating, Mr. Willoughby emphasized the application of Schedule Rule 2, Section 2, reading:

'Section 2. When force is reduced any employe affected shall have the right to displace the employe of like classification who has the least seniority within the prescribed seniority limits, and if there be no employe to displace as provided above, the employe affected shall have the right to displace the junior employe in similar service in the department or district from which said employe was transferred or promoted.'

"In conformity with above quoted rule, Welder Foreman M. W. Peel, being the senior of the two welder foremen involved, had an undisputed right for assignment to welder gang No. 201, assigned to the Southern Division, effective October 2, 1939. As stated in Employees' Statement of Facts, Peel officially expressed his desire for assignment as foreman to

welder gang No. 201. Instead, however, of assigning Peel, the senior welder foreman, the Carrier assigned Welder Foreman Colson, six years junior to Peel,—see seniority roster, Southern Division, Employees' Exhibit 'B.' We maintain that in denying Foreman Peel the right to exercise his seniority for assignment to the welder gang in question and by assigning a junior man, the Carrier violated Schedule Rule No. 2, Section 2.

"We further hold that Welder Foreman M. W. Peel shall now be assigned as foreman to welding gang No. 201, and paid for lost time in conformity with the claim, and we respectfully request that this Board so direct."

CARRIER'S STATEMENT OF FACTS: "Prior to August 31, 1939, Mr. M. W. Peel was foreman-operator of one of the gas welding forces on the Southern Division. These forces were cut off at close of work August 31, 1939.

"On October 2, 1939, there was organized one welding gang No. 201, into which was combined the electric welding forces and the gas welding forces. Mr. Peel bid on the position of foreman-operator of this gang. As Mr. Peel had never had experience in electric welding, and further has stated that he will not handle the torch and never expects to handle the torch in relieving a mechanic on the force even if the mechanic must have relief, which is duty attaching to the position of foreman-operator, account condition of his eyes, he was not given the position of foreman-operator of this gang. However, in order to afford him employment he was offered position of assistant foreman of this force, which he declined."

POSITION OF CARRIER: "Rule 3, Section 1 of the 'Revised Rules and Regulations for Maintenance of Way Employees' reads as follows:

'Section 1. Preference in promotion or retention in the service within their respective districts will be given employees who have been the longest in the service, promotion dependent upon faithful discharge of duty, competency, and capacity for increased responsibility; the Management to be the judge. Nothing in this rule will prevent the employees from bringing to the attention of the Management their views as to the ability and merit of any person to be promoted. Employees declining promotion shall not lose their seniority except to the employees promoted and only in the next higher rank of service.'

"It is the position of the Carrier that Mr. Peel lacked sufficient ability and merit for the new job of foreman-operator of the combined electric-welding and gas-welding force No. 201, for the reasons set forth in the above statement of facts, and accordingly under the above quoted rule of the agreement he was not given the position of foreman-operator of this gang.

"The carrier reserves the right if and when it is furnished with the petition filed ex parte by the petitioners in this case, which it has not seen, to make such further answer and defense as it may deem necessary and proper in relation to all allegations and claims as may have been advanced by the petitioners in such petition and which have not been answered in this its initial answer."

OPINION OF BOARD: In view of the circumstances in this case the Board finds no reason to disturb the action of the Carrier.

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 employee involved in this dispute are respectively carrier and employee 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 Board finds no reason for disturbing Carrier's action.

AWARD

Claim denied in accord with Opinion and Finding.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 18th day of February, 1941.