

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY**

STATEMENT OF CLAIM: "Claim of Section Foreman, John Dunlap, that the Carrier violated Schedule Rule 5, and Memorandum of Agreement dated January 20th, 1938, by denying him the privilege to displace a junior Section Foreman working in a temporary assignment at Watts Bar, pending assignment by bulletin, from December 18, 1939, to January 16, 1940, inclusive; and being denied the privilege to thus exercise his seniority rights, he shall be paid what he would have earned as a Section Foreman from December 18, 1939, to January 16, 1940, inclusive, at the rate of \$142.70 per month, or the amount of \$134.40."

EMPLOYES' STATEMENT OF FACTS: "John Dunlap holds seniority rights as Section Foreman as of August 20, 1928. R. Eldridge holds seniority rights as Section Foreman as of April 1, 1929.

"Prior to December 18, 1939, John Dunlap was working on a temporary assignment as Section Foreman at Boyce, Tennessee. On December 17, 1939, Dunlap was advised that he would be displaced as Section Foreman at Boyce by reason of that the regular foreman was returning to service. John Dunlap then expressed a desire to displace junior Section Foreman, R. Eldridge, who was working on a temporary assignment as Section Foreman at Watts Bar. This Dunlap's request was declined by the Carrier."

POSITION OF EMPLOYES: "Rule 5, paragraphs 1 (a), 1 (b), 1 (c) and 1 (d) of agreement between the Carrier and the Brotherhood of Maintenance of Way Employes, effective September 16, 1929, which was agreement in effect at the time this claim arose, reads:

'1-(a). An employe holding a division position may displace only the junior employe of the same rank with the least seniority who is holding a division position.

'1-(b). If no division position to which he is entitled under provisions of paragraph 1-(a) above, he may then displace only the junior employe of the same rank with the least seniority who is holding a position on the district forces on his district.

'1-(c). In the event there is no position to which he is entitled under provisions of either paragraph 1-(a) or 1-(b), he may then displace only the junior employe of the next lower rank with the least seniority who is holding a division position.

gang performing blasting operations, nor as an autogenous welder a man whose only experience was in carpentry.

"The Watts Bar tracks are maintained at the expense of the Tennessee Valley Authority, which requires that expense items be kept in detail. The only source of such information is the foreman, who directs the day-by-day work of maintenance. Mr. Eldridge grew up with the reports required in the construction of the tracks and was willing to impart his knowledge to Mr. Dunlap, had he been willing to receive it. There was no other way for him to acquire it. He didn't claim to have it. In fact, Mr. Dunlap has never claimed that he had any knowledge of what was required in the way of reports on this job, and he didn't know anything about them until he spent some time going over them with Mr. Eldridge on the afternoon of December 25th. That brief survey of them convinced him that he required further instruction, and he arranged to receive it, but when he learned that it was improbable that he would be assigned to the position of foreman, under the bulletin, his ardor cooled and he abandoned his efforts to qualify for the job.

"The respondent submits that this claim is without merit under the agreement or in equity; that Mr. Dunlap recognized that he did not possess qualifications required and that he failed to avail himself of opportunities to acquire them.

"Respondent further submits that, unless the terms of the agreement can be found to require it to place a man on a position for which he does not possess sufficient qualifications (and it does not), the claim must be denied."

OPINION OF BOARD: It is admitted by all the parties that the claimant John Dunlap on the basis of seniority was entitled to displace the junior Section Foreman at Watts Bar, subject to the single contingency and question as to his qualifications and capability to perform the duties connected with that particular job, and the issue is narrowed for decision to that one point.

The record shows, and it is not disputed, that Dunlap had been successfully performing the duties of a regular Section Foreman for something over 11 years prior to the commencement of this controversy, and it is admitted that there is nothing before the Board to indicate that he had not performed those duties successfully, including the making of all usual and customary reports incident to his employment. Photostatic copies of several of those reports appear in the record for the purpose of illustrating the kind of work Mr. Dunlap had been doing. On the other hand, it is insisted by the Carrier that there were peculiar duties connected with the particular section at Watts Bar which they say Mr. Dunlap could not perform without special training. In support of this position the Carrier has introduced a sample report made for that section showing the general nature and character of the work to be done. An inspection of this Exhibit and a consideration of all of the evidence in connection with it indicates that it is no more difficult or complicated than any other report ordinarily handled by an ordinary Section Foreman.

The past record and experience of the claimant leads to a presumption that the claimant is capable of doing this work and there has been no evidence presented sufficient to overcome the presumption. The award therefore is that the claim will be allowed.

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 claim will be allowed.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1941.