

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
SEABOARD AIR LINE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood:

(1) That the Carrier violated the effective agreement when they failed to assign Oxwelder J. T. Woods to the position advertised in Bulletin No. 19, and assigned by Circular No. 33, issued June 15, 1949;

(2) That Oxwelder J. T. Woods be assigned to the position advertised in Bulletin No. 19, and be compensated for the wage loss suffered by him as a result of the Carrier's improper action.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 15, 1949, the Carrier issued Bulletin Number 19, advertising position of Oxwelder and Oxwelder Helper.

Oxwelder J. T. Wood placed his application for the position of Oxwelder. J. T. Woods holds seniority date of Oxwelder, as of May 4, 1948.

Oxwelder Helper H. B. Wiggins placed his application for the position of Oxwelder referred to in Bulletin Number 19. H. B. Wiggins holds no seniority as an Oxwelder.

On June 15, 1949, Circular No. 33 issued by the Carrier, assigned Oxwelder Helper H. B. Wiggins to the position of Oxwelder, as advertised in Bulletin Number 19.

On June 18, 1949 the Carrier was requested to correct Circular Number 33 and to assign senior applicant J. T. Wood to the position of Oxwelder, and further that he be compensated for all wage loss suffered by him as a result of the improper assignment.

The Carrier contended that J. T. Wood was not qualified to fill the position of Oxwelder and claim was declined.

The agreement in effect between the two parties to this dispute, dated July 1, 1941, and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

to position of helper. The Carrier could not now assign Mr. Wood to a position that no longer exists and, further, Mr. Wood left our service of his own accord without notice in November 1950, simply sending Roadmaster a post card from Washington, D. C., November 12, to the effect that he was mailing his pass and keys, which he did. Accordingly, he was dropped from our roster for being absent without permission.

In consideration of the above facts and circumstances, Carrier respectfully requests that the claim be denied.

Carrier affirmatively states that all data contained herein has been made known to or discussed with representative of the Organization.

OPINION OF BOARD: On June 4, 1949, Carrier bulletined a position of Oxwelder. Oxwelder Helpers Wiggins and Wood bid for the position. Carrier awarded the position to Wiggins. The Organization contends that the position should have been assigned to Wood and that he is entitled to be paid the wage loss suffered.

The record shows that Wiggins and Wood were the only bidders. Wiggins had seniority as Oxwelder Helper as of July 8, 1941. Wood had seniority as Oxwelder Helper as of June 18, 1945. Carrier contends that Wood was not a qualified Oxwelder and that Wiggins was senior to him as an Oxwelder Helper. The Organization contends that Wood had qualified as an Oxwelder and held seniority as such. If this be true, Wood was entitled to the disputed work in preference to Wiggins. The question for determination is whether Wood held seniority as a qualified Oxwelder.

The contention of Claimant rests on the following facts: On May 4, 1948, Claimant Wood had been awarded a position as Oxwelder for the purpose of operating a rail end hardening machine. No Oxwelders bid for the position and Claimant Wood was the senior Oxwelder Helper bidding for it. He operated the rail end hardening machine until October 6, 1948, a little more than five months. On April 4, 1949, the Division Engineer issued directions that the Virginia Division Seniority Roster, issued on January 1, 1949, should show J. T. Wood as Oxwelder with seniority as of May 4, 1948. Carrier asserts that the action of the Division Engineer was an error and Claimant's name was not included in the January 1, 1950 roster as an Oxwelder.

The Carrier asserts also that Claimant's work in operating the rail end hardening machine was unsatisfactory, that he was cautioned several times about his failure to adhere to the standard time required to end harden the rails of each joint and to properly spot the rail end hardening machine in order to produce a satisfactory result. Carrier asserts further that excessive batter of the rail ends occurred prematurely because of the unskilled work which resulted in great expense to the Carrier. Carrier also states that the Oxweld Railroad Service Company provided instructors to qualify Oxwelders. The assigned instructor states that he had never qualified Claimant as an Oxwelder and that some of the work performed by him while operating the rail end hardening machine was unsatisfactory.

We think Claimant attained seniority as an Oxwelder on May 4, 1948, the first day he was assigned to a bulletined position of Oxwelder. Rule 3 (a), Current Agreement. Claimant was entitled to a trial period of six months in which to qualify as an Oxwelder under Rule 10 (c), Current Agreement. Claimant worked as an Oxwelder from May 4, 1948, to October 6, 1948. His name was not listed as an Oxwelder on the January 1, 1949, roster and the Division Engineer directed on April 4, 1949, that the roster be corrected and claimant be shown as an Oxwelder as of January 1, 1949. We do not think it is material whether the Division Engineer made an error in this respect. Claimant worked as an Oxwelder for more than five months. He was supervised and the nature of his work observed. The Carrier observing the quality of his work took no steps to disqualify him during the six months'

trial period. It seems to us that Claimant had seniority as an Oxbwelder commencing May 4, 1948, as provided by Rule 3 (a). He has never been disqualified by the Carrier under Rule 10 (c) and he has not been demoted as an Oxbwelder under the disciplinary provisions of the Agreement. Claimant therefore held seniority as an Oxbwelder at the time the position in question was awarded to Wiggins, an Oxbwelder Helper who had no seniority as an Oxbwelder. Claimant was entitled to the position under the controlling 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 Employees involved in this dispute are respectively Carrier and Employees 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 Agreement was violated as claimed.

AWARD

Claim (1) sustained. Claim (2) sustained only for the wage loss sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago Illinois, this 26th day of May, 1952.