

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
TEXAS AND PACIFIC RAILWAY**

STATEMENT OF CLAIM: "Claim of L. T. Williams, B. & B. carpenter, Fort Worth Division, with seniority rights as a carpenter as of March 7, 1930, as per the 1938 seniority roster; first; that the Carrier violated Article 2, Section A, of the current agreement when denying him the right to displace L. F. Madden, B. & B. Carpenter, with a seniority date as of September 5, 1934, as per the 1938 seniority roster.

"Second that he be paid the difference between the rate of pay received as a carpenter helper and the rate of pay applicable to a carpenter retro-active from December 16, 1938, the date he made formal request to displace Madden."

EMPLOYEES' STATEMENT OF FACTS: "L. T. Williams holds seniority rights as a B. & B. Carpenter, Fort Worth Division, and was working in that capacity until some time during the summer of 1938, when as a result of force reduction, and not knowing that there was a junior carpenter working, was obliged to exercise his seniority as a carpenter helper. Later he learned that a junior carpenter was working in the capacity of carpenter at carpenter's rate. Having gained this information, Williams on December 16th, 1938, sought to displace or bump this junior carpenter, which request was denied by the Carrier."

POSITION OF EMPLOYEES: "Article II, Section (a) of agreement in effect between the Texas & Pacific Railway and the Brotherhood of Maintenance of Way Employees reads:

'Seniority.

Section (a) Seniority or length of unbroken service shall be the basis for determining the rights of employees to consideration for various positions. This, however, to be subject to such exceptions and considerations as may be hereinafter noted.'

The last paragraph of Article II, Section (f) reads:

'B. & B. Men.

The seniority rights of laborers in gangs classified as belonging to the B. & B. Department will be restricted to their respective gangs. In case of reduction in force, foremen, mechanics and helpers may replace junior foremen, mechanics and helpers on their respective seniority districts. After exhausting their rights in their respective classes, they may drop to a lower classification if they so desire.'

Article II, Section (a) above quoted, specifically provides that seniority rights or length of unbroken service shall be the basis for determining the

time account reduction in force approximately 2 years and 4 months, and this is the period in which it is claimed by you that he lost his seniority. There is no more reason why Madden should lose his seniority between 1932 and 1934 while he was off account reduction in force than there would be on occasions prior thereto. He was working under our former agreement (the one in effect as of December 16, 1921) at the time he was taken off and also at the time he was recalled to service. It is true that our rule was changed since that time, as of November 16, 1937, when we got out our new agreement.

Madden wrote Supervisor J. C. Griffin on May 23, 1932, at the time he was taken off, which clearly shows that he made a practical compliance with paragraph (g), Rule 2, of the then existing agreement. I am attaching a copy of that letter hereto for your information. Investigation that I have made since our conference develops the fact that Madden did not change his place of residence during all that period, or, as I understand it, for years prior thereto. He was with Foreman Prothro when the reduction in force was made in 1932 and Prothro knew where to get him at any time he needed him during the entire period, and notified Madden at his Houghton address when he wanted him to return.

I trust with this information you can see your way clear to withdraw the case.

Yours truly,

(Sgd.) W. H. TOBIN,
Assistant General Manager.'

cc-Mr. R. H. Gaines
Mr. L. L. Oliver.

"As will be noted from our statement of facts, Madden returned to service the last time on September 5, 1934, as a mechanic.

"The claim of the Organization is, in part, that Williams be paid the difference between the rate of pay received as a carpenter helper and the rate of pay applicable to a carpenter retroactive from December 16, 1938, and while we feel that the case is entirely without merit we wish to state that the first notice we have record of was Assistant General Chairman Winchell's letter to General Roadmaster Gammie dated January 10, 1939, and that at any rate, claim should not be made retroactive of that date.

"Please be referred to Awards 849, 851 and 932 of your Division as well as Awards 336, 2539, 2614, 2615, 2730, 2731 and 4007, First Division of your Board, all of which declined to make payments retroactive even where supported by rule prior to date of the first claim of protest."

OPINION OF BOARD: Claim here is based on right of L. T. Williams to displace L. F. Madden in reduction of force, under Section (f), Article 2. Displacement rights are only acquired in force reduction. The record shows there was no reduction in force, therefore, Williams held no displacement right.

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 employes involved in this dispute are respectively carrier and employes 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 there was no violation of the rules.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 26th day of January, 1940.