

Award No. 1179  
Docket No. MW-1206

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

I. L. Sharfman, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES  
NORFOLK SOUTHERN RAILROAD COMPANY

**STATEMENT OF CLAIM:** "Claim of B. & B. Foreman, W. R. Klass, Northern District, first; that he be permitted to displace B. & B. Foreman C. H. Hearn, in charge of the so-called paint and repair gang, Northern District.

"Second: that he be paid the difference between what he had earned in the lower classification and that which he would have earned as B. & B. Foreman retroactive from March 1, 1939."

**EMPLOYEES' STATEMENT OF FACTS:** "Article 3, Paragraph (a) of agreement effective March 1, 1939, reads in part:

'Article 3.

Seniority.

'(a) Two (2) Seniority Districts are hereby established known as District No. 1—comprising all lines north and east of and including Marsden Yard;  
District No. 2—comprising all lines west of Marsden Yard.'

"Bridge and Building Foreman C. H. Hearn, holding seniority rights as such on the Western District (District No. 2) was working in charge of a Bridge and Building gang employed on the Northern District, (District No. 1) on which district he had no seniority rights as Bridge and Building Foreman.

"Under date of February 14th, 1939, Bridge and Building Foreman W. R. Klass, holding seniority rights as foreman on the Northern District (District No. 1) by letter to J. T. Phillips, Supervisor Bridge and Buildings, made formal request for an opportunity to exercise his seniority rights by displacing Foreman C. H. Hearn. This request was denied by the Carrier."

**POSITION OF EMPLOYEES:** "As per provision of Article 3, Paragraph (a) of agreement in effect, quoted in Employees' Statement of Facts, the Railroad is divided into two seniority districts: 1—the Northern, or District No. 1; 2—the Western, or District No. 2. As further stated in Employees' Statement of Facts, Bridge and Building Foreman C. H. Hearn holds seniority rights on the Western, or District No. 2. Bridge and Building Foreman W. R. Klass holds seniority rights on the Northern or District No. 1. We are attaching hereto as Employees' Exhibit 'A,' seniority roster of foremen on the Western District, or District No. 2, and as Exhibit 'B,' seniority roster of foremen on the Northern, or District No. 1.

"2. Article 3—Seniority, of this agreement has no application because of the side agreement that was made in the establishment of this system force, and that even though it were ruled that it should apply, that portion of Section (a), last sentence, reading:

'Seniority rights of employes as of November 25th, 1937, shall be protected.'

would bar any interference with the present set-up.

"(Note: This portion of the rules referred to was agreed to after thorough discussion with the Committee representing Maintenance of Way and Structures Employes and was made a part of this agreement for the purpose of preventing 'bumping' of the men from the jobs held as of that date.)

"3. Article 4—Promotions, etc.—Section (a), reading:

'Promotions shall be based on ability, merit and seniority; ability and merit being sufficient, seniority shall prevail, the management to be the judge.'

gives the Management the right to be the judge of the fitness of the man for position, which right was exercised in this case.

"4. Article 5, Section (d) wherein a time limitation of sixty days from date of occurrence is agreed upon in which claims or grievances may be filed with the proper officer of the Company and failure to file such claims or grievances within this period would bar consideration. Objections to this foreman operating over the entire system were not raised within sixty day limit required under this rule; therefore, Klass loses the case on that basis if no other and it is hoped and confidently expected that your Honorable Board will so rule.

"For the reasons set forth the Management believes that your decision will be rendered in its favor."

**OPINION OF BOARD:** It is uncontradicted that the establishment of the system paint and repair gang and the assignment of Foreman Hearn thereto resulted from the special agreement of August 13, 1934. For the entire period during which this special agreement remained operative Foreman Hearn was clearly entitled to the position in charge of the system gang, even when it worked in the Northern District, in which, as such, he held no seniority. Subsequent to March 1, 1939, however, this special agreement was obviously no longer operative. On that date a new general Agreement became effective, applicable to "all foreman," amongst other classes of employes, which expressly specified that its rules "supersede all rates, rules, practices and working conditions in conflict therewith." This new Agreement recognized but two seniority districts—the Northern District (No. 1) and the Western District (No. 2)—and neither made provision for system seniority nor contained any other saving clause with respect to the system arrangement previously in effect. Under these circumstances Foreman Klass, holding seniority in the Northern District, became entitled, as of March 1, 1939, to displace Foreman Hearn, holding no seniority in that district, in connection with all work performed in the Northern District, and to be reimbursed for such monetary loss as he has incurred since that date in connection with such work because of the failure of the carrier to permit him to displace Foreman Hearn.

**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 evidence of record discloses a violation of the Agreement of March 1, 1939.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: H. A. Johnson  
Secretary

Dated at Chicago, Illinois, this 7th day of August, 1940.