

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

George E. Bushnell, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

THE WESTERN PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: "Claim that Mr. Wm. Killinger, who held position of Section Foreman, Doyle, California, was erroneously displaced from such position effective May 1, 1939, by Mr. L. Wright, and compensation for monetary loss sustained as result thereof."

JOINT STATEMENT OF FACTS: "As result of motorcar accident on his section (Elburz) Mr. L. Wright was dismissed from service on or about November 1st, 1937. Action of the Carrier was not appealed. Mr. Wright accepted the responsibility and dismissal and his name was eliminated from Section Foreman's seniority roster.

"In March, 1939 (16 months later) Mr. Wright personally requested Division Superintendent Curtis to permit him (Wright) to return to service. Division Superintendent Curtis agreed to restore Mr. Wright to service with full seniority rights but without pay for time lost and with further provision that he (Wright) would not be allowed to displace any regular provision foreman but would revert to the foreman's extra list.

"After his restoration to service Mr. Wright was, on April 12, 1939, allowed to displace Section Foreman J. Mandy, who was relieving regular Section Foreman Lisenbee at Tobar. Foreman Lisenbee returned and assumed his regular position on May 1, 1939.

"On May 1, 1939, Mr. Wright was permitted to displace Section Foreman Killinger, at Doyle, who was working in place of regular Section Foreman Morrison.

"Since May 1, 1939, Mr. Killinger has been employed on various positions as his seniority would permit, but with loss of both time and compensation.

"The employes protested the Carrier's action in restoring Mr. Wright's full seniority and allowing him to displace Section Foremen, especially the displacement of Mr. Killinger and made claim for monetary loss suffered.

"The Carrier declined employes' claim."

POSITION OF EMPLOYES: "Formal investigation held in accordance with the provisions of Rule 23 of Agreement October 20th, 1937, showed conclusively that Mr. Wright was wholly responsible for the accident wherein his motor car was struck by a train. Mr. Wright accepted this responsibility and did not, within the time limit prescribed, appeal from the decision of the carrier.

"5. Carrier's action in permitting Wright to displace Killinger from the temporary (unbulletined) vacancy created by leave of absence of regular foreman is sustained in your Award No. 1058 in Docket No. MW-1093."

OPINION OF BOARD: This case is similar to the situation in Award 1243 and the Opinion of the Board in that award is reaffirmed here.

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 Mr. L. Wright's seniority date should be as of the date he re-entered the service in accord with Rule 2.

AWARD

The claim is sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 12th day of May, 1941.