

Award No. 2530

Docket No. MW-2536

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Bruce Blake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY**

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

(a) That the Carrier violated the provision of Rule 32 of the Agreement in paying L. W. Bernamann, Grinder on a welding crew, at the lower rate when it assigned him temporarily to a lower rated position; and

(b) That L. W. Bernamann be paid the difference between what he received for July 29, 30, 31, August 1 and 3, inclusive, 1942, and the rate applicable to the position to which he was assigned by bulletin April 1, 1942.

EMPLOYEES' STATEMENT OF FACTS: Under date of April 1, 1942 L. W. Bernamann was assigned as grinder in a welding gang. The rate of the position to which he was assigned was 85 cents an hour.

After the close of his regular assignment on July 28 Bernamann was advised by Mr. Brockman, welding crew foreman, that commencing July 29 he (Bernamann) would be temporarily demoted from a grinder to a laborer.

Rate of the bulletined position which the claimant held was 85 cents an hour. The rate received by him for July 29, 30, 31, August 1 and 3, 1942 was 60 cents an hour.

The agreement in effect between the Carrier and the Brotherhood is by inference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Under date of March 12, 1942 L. W. Bernamann was assigned as grinder in a welding gang. The rate of the position was 85 cents per hour. After the close of his tour of duty on July 28, 1942, due to changes that had taken place in the consist of the gang, and the necessity for reducing the number of grinders from six to five, Mr. Bernamann was notified his seniority would not entitle him to employment as a grinder, and as there was no other employment to which his seniority would entitle him, paying a rate higher than that of a laborer, he performed service in the latter capacity until August 4, 1942, when there was an opportunity for him to again secure a position as a grinder due to a senior grinder entering the armed forces.

assigned to Mr. Bernamann was bulletined and assigned in accordance with that rule, and as indicated above, there was no guarantee in that bulletin, nor in Rule 8, to which the organization refers, that Mr. Bernamann was to be continuously employed as a grinder regardless of the changed conditions, all of which were contemplated by schedule Rule 9. Therefore, there was no violation whatever of Rule 8.

The organization introducing the second paragraph of Rule 32 permits advising that Mr. Bernamann was affected by force reduction, therefore, this rule which provides in part "except in case of force reduction" would not be in any way applicable to the case. An employee being affected by force reduction or through the exercise of seniority which results in him exercising seniority to a lower rated position is in line with the practice, understanding and application of schedule rules.

While apparently there is a conflict as between the statement made by Mr. Bernamann and Foreman Brockman with respect to his privileges when he was affected by force reduction, assuming Foreman Brockman did make the statement which the organization attributes to him which the carrier contends actually was not the case, the net effect would have been the same, in other words there were no junior grinders working and Mr. Bernamann could not have earned in excess of the laborer's rate.

Briefly, it is the carrier's position that Mr. Bernamann was affected by a simple force reduction clearly contemplated by Rule 9, that he was not arbitrarily placed on a lower rated position but rather, because of the reduction in force, his seniority entitled him to nothing but a laborer's position until, on August 4th there was a grinder's vacancy to which he could exercise his seniority and again perform service commanding the higher rate. There is no justification for the claim which should be declined.

OPINION OF BOARD: April 1, 1942, claimant was assigned a position of grinder in a welder gang of which A. Brockman was foreman. The gang consisted of four welders, six grinders and six laborers. On June 15th one of the grinders in the exercise of his seniority rights transferred to another gang. The vacancy resulting was not bulletined so the number of grinders in the crew was reduced to five.

June 29th and July 13th respectively grinders on other gangs, in the exercise of seniority rights, transferred to Brockman's gang. As a result claimant was junior, in seniority to rights, to the other four grinders. On July 15th Henry Howe, in the exercise of seniority rights, transferred from another gang to Brockman's. The carrier takes the position that this resulted in the displacement of claimant as a grinder. It does not appear, however, that claimant was notified that Howe had displaced him in the exercise of seniority rights—at least not before July 28th. Until the latter date claimant continued to work as a grinder.

On July 29, 30, 31 and August 1 and 3, he was assigned to a job as laborer. The circumstances under which the change took place are in dispute. The carrier contends that he was forced out of his position as grinder, by reason of Howe having exercised seniority rights; and that, as otherwise he would have been out of a job, he was given the privilege of continuing work, with the gang, as laborer.

Claimant contends that Brockman told him that he was being temporarily assigned to a laborer's job. We think the weight of the evidence supports claimant's position on this issue. In the first place we think the carrier impliedly admits the fact as asserted by claimant. In any event, the carrier does not categorically deny it. In the second place on the day the change occurred claimant wrote to the Superintendent of Work Equipment and Welding protesting Brockman's action. In this letter he said: "I was informed by Mr. Brockman that beginning the 29th, I would be temporarily demoted from a grinder to a laborer." This letter was written so soon after

the conversation with Brockman as to amount to a part of the transaction. Obviously the statement was spontaneous and was not made in an attempt to fabricate evidence.

The carrier contends, nevertheless, that claimant's change of position from grinder to laborer was brought about by "force reduction" in contemplation of Rules 9 and 32 of the agreement. We think the facts bring the dispute within the purview of Rule 32. That rule provides:

"COMPOSITE SERVICE

"An employe required to fill the position of another employe receiving a higher rate of pay, shall be paid the rate of such position for the work day when the time so engaged is in excess of four (4) hours.

"Except in case of force reduction, if an employe is required temporarily to fill the place of an employe receiving a lower rate, his rate will not be changed." (Emphasis added.)

Now, it is clear from the record that the personnel of the crew was just exactly the same on July 29th as it was on July 28th. There was no reduction in the number of men in the gang. The only effect resulting from claimant's change of status was to make one less grinder and one more laborer. Under any fair interpretation of the rule we do not think this change in claimant's status constituted a "force reduction."

On the other hand, as we view the facts, claimant was required temporarily to fill a position calling for a lower rate of pay. In our opinion his claim falls within the express terms of the rule. He is entitled to a grinder's rate of pay for the days he was temporarily assigned to work as a laborer.

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 the carrier violated the agreement.

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 April, 1944.