

Award No. 5574
Docket No. MW-5507

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ILLINOIS CENTRAL RAILROAD COMPANY**

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

(1) The Carrier violated the agreement when it assigned a junior Ditcher Operator to operate Ditcher on the Mississippi Division on January 26, 1949, and subsequent days thereto, instead of assigning senior operator T. R. Vallandingham;

(2) T. R. Vallandingham be paid eight hours each day, January 26 and 27, 1949, at the Ditcher Operator's straight time rate of pay and that he be paid the difference between what he did receive at the Ditcher Fireman's rate of pay and what he should have received at the Ditcher Operator's rate of pay beginning January 28, 1949, until such time as he was permitted to displace in accordance with his seniority.

EMPLOYEES' STATEMENT OF FACTS: T. R. Vallandingham is listed as Operator No. 5 on the American Ditcher Operators, Tractor Ditcher Operators, Dragline Operators Seniority Roster, Mississippi Division, covering the period June 1, 1948, to June 1, 1949.

T. L. Robinson is listed as Operator No. 8 on the same seniority roster.

On January 26 and 27, 1949, the Carrier used Operator Robinson as an American Ditcher Operator. Operator Vallandingham was furloughed on these two respective days.

On January 28, 1949, and on subsequent days thereto, Operator Robinson was employed as an American Ditcher Operator and Operator Vallandingham was employed as an American Ditcher Fireman.

Claim was filed with the Carrier on February 17, 1949, requesting that Vallandingham be paid at the American Ditcher Operator's rate of pay for January 26 and 27, 1949, and that he be paid the difference between the American Ditcher Operator's and the American Ditcher Fireman's rate of pay for each day subsequent to January 27, 1949, that a junior operator was used in preference to Vallandingham, and claim was declined.

Vallandingham was recalled to position of Tractor Ditcher Operator on March 1, 1949, and assigned as American Ditcher Operator on June 1, 1949.

sonably, fairly, and in good faith without bias or prejudice. If it is shown that Carrier's decision is unreasonable or unfair, employees would be entitled to relief."

The facts in the instant case are analogous to those in Third Division Awards 1365, 3668 and 3798, i.e., Claimant Vallandingham desired to displace on a position on which he did not acquire right thereto in accordance with the rules agreement, moreover, Claimant Vallandingham was not qualified as an American ditcher engineer. The Carrier asserts that its action in not permitting Claimant Vallandingham to displace a qualified American ditcher engineer is in accord with the applicable rules agreement and is justified as a principle of reasonable managerial discretion, and if consideration is nevertheless given to this claim, notwithstanding that it is barred under the time limit rule (Rule 26), the claim should be denied in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This claim was declined by the Carrier's Manager of Personnel on July 26, 1949. Subsequently he made an offer of settlement which was not accepted and on August 22, 1950, advised that he was agreeable to joining in submission of the case to this Board.

Thereafter, on November 1, 1950, the parties entered into an agreement revising certain rules of their Agreement. Among the rules so revised was Rule 26, relating to Claims and Grievances, so that it provided in part as follows:

"* * * If (a claim is) declined by the Manager of Personnel, it may be appealed within one year of such declination to the appropriate division of the National Railroad Adjustment Board.

(b) Any claims or grievances not presented or appealed in accordance with the preceding paragraph will not be recognized by either party to this agreement. * * *

The Carrier contends that such limitation bars this claim. There is no question but that changes in procedural rules are applicable to pending claims. Hence, the claim must be dismissed.

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 Employee involved in this dispute are respectively Carrier and Employee 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 claim is barred by the revised agreement of November 1, 1950.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of December, 1951.