

Award No. 5604

Docket No. MW-5588

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Francis J. Robertson, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND & PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they assigned a junior Water Service Mechanic's Helper to unload fuel oil on October 3, 4, 5 and 6, 1949, and furloughed W. D. Harris, a senior Water Service Mechanic's Helper;

(2) Water Service Mechanic's Helper W. D. Harris, be paid at his respective straight time rate of pay for a period of eight (8) hours on each of the four days referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: W. D. Harris is regularly employed as a Water Service Mechanic's Helper on the Arkansas Division. His seniority date in this class is shown on the seniority roster as November 12, 1943.

J. F. Dreher is regularly employed as a Water Service Mechanic's Helper on the Arkansas Division. His seniority date in this class is shown on the seniority roster as October 4, 1946.

Subsequent to the year 1942, Water Service Mechanic's Helpers have been assigned to unload fuel oil at the Arch Street Tank Farm, at Biddle, Arkansas. Prior to September 19, 1949, this work was assigned to Water Service Mechanic's Helper, W. D. Harris.

Effective September 19, 1949, Mr. Harris was instructed by his foreman to perform other duties. These duties were completed as of September 30, 1949. During the time that Helper Harris was assigned to work other than that of pumping fuel oil, the pumping work was performed by Water Service Mechanic's Helper Dreher. Upon Harris' release from other duties, on September 30, he expressed his desire to again perform the fuel oil pumper's duties at the Arch Street Tank Farm.

He was not permitted to do so and was furloughed, while Dreher continued to perform the pumping duties. Claim was filed in Harris' behalf, such claim contending that Helper Harris should be paid at his respective straight time rate of pay for eight (8) hours on the following days: October 3, 4, 5, and 6, 1949. Claim was declined.

Their work will also include the repairing and maintaining of all gas, oil, steam, air and electric pumps, other than those used directly on engines or cars; also, all repairs to and maintenance of all roadway department motor cars.

They will be considered composite mechanics, as their work covers all classes of mechanical work.

(c) Water Service Mechanics' Helpers: Employes assigned to perform work generally recognized as helper's work and to assist mechanics in the performance of their work.

(d) Laborers may be employed, as required, to do excavating or back filling and similar miscellaneous pick and shovel work.

GROUP 7. Coal Chute Forces handling locomotive fuel, either coal or oil, shall be divided as follows:

- (a) Coal Chute and Fuel Oil Foremen.
- (b) Coal Chute Laborers and Sand House Men.
- (c) Locomotive Fuel Oil Laborers.

RULE 2. SENIORITY. (b) Seniority rights of employes in seniority groups 1, 2, 3, 4, 5, 7, 8 and 12 are confined to their respective groups. Employes in seniority group 6 likewise hold seniority in seniority group 9. Seniority rights of employes in seniority groups 6, 9, 10 and 11 and in groups 6, 9 and 13 are interchangeable as per provisions of these rules."

Claimant Harris held no seniority in Group 7, which is the group in which employes handling locomotive fuel oil hold seniority. Rule 2 (b) clearly states that the seniority rights of employes in seniority Groups 3 and 7 are confined to their respective groups; that is, an employe holding seniority in Group 3 (c) has no seniority rights whatsoever in Group 7, and the reverse is likewise true.

The work of unloading and pumping fuel oil at Arch Street, Biddle, Arkansas, is not regular employment, labor being used as needed. Inasmuch as claimant Harris had no seniority in Group 7, he had no seniority rights superior to Mr. Dreher.

There is no ambiguity in Rule 2 (b) and therefore no practice with respect to the irregular work of pumping and/or unloading oil at Arch Street may alter the plain terms of Rule 2 (b). Briefly, the gist of the matter is that Mr. Harris had no right whatsoever to displace Dreher when Claimant Harris was released in reduction of force, because Claimant Harris had no seniority in Group 7 (c). For this reason, the claim should not be allowed.

It is hereby affirmed that all data herein contained is known to the employes' representative and is hereby made a part of this dispute.

OPINION OF BOARD: Claimant W. D. Harris, a regularly assigned Water Service Mechanic's Helper, was furloughed on September 30, 1949. For some time prior to September 19 he had been temporarily assigned to work in unloading fuel oil at Carrier's Arch Street Tank Farm. Between September 19 and September 30 he was assigned to other duties by his foreman. When those duties were completed on September 30 he requested permission to again perform the work in connection with the fuel oil unloading which was then assigned to a Water Service Mechanic's Helper junior to him. Carrier declined that request. It appears that the work of unloading fuel oil was of an intermittent character on which labor was used as needed and that since 1942 the Carrier has generally assigned Water Service Me-

chanic's Helpers to such work. It is conceded that neither Claimant nor the junior employe whom he sought to displace hold any seniority in Group 7 (c) in which Locomotive Fuel Oil Laborers are encompassed.

Although the instant Agreement confines seniority of Water Service Helpers to Group 3 which is independent of Group 7 (c), Rule 4 (c) concerning temporary vacancies indicates that senior employes in the respective seniority groups will be given preference on temporary positions. Rule 2 (a) further emphasizes the factor of seniority in consideration for positions. It is a necessary corollary of these provisions of the Agreement that when Carrier elects to call employes from an established seniority group to perform work of another group, there being no employes holding seniority in that other group available, Carrier is bound to take notice of the seniority rights of the men in the group called upon to perform the service. There is no question of the qualification of the Claimant to perform the work here involved. Accordingly, he should have been given preference over the junior man. For other awards involving this same principle see Awards 2341, 4541 and 4841.

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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 14th day of January, 1952.