



Award No. 14768

Docket No. MW-15719

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Arthur W. Devine, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

**SOUTHERN PACIFIC COMPANY—
TEXAS AND LOUISIANA LINES**

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

(1) The Carrier violated the Agreement and established practices thereunder when, effective June 1, 1964, it permitted A. G. Martinez to displace Jesse Rhodes as Laborer-Driver on Extra Gang No. 330. (System Claim No. MW-64-34)

(2) Laborer-Driver Jesse Rhodes be compensated for all monetary loss suffered because of the violation referred to in Part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: The claimant was regularly assigned as a Laborer-Driver with Extra Gang No. 330 on the San Antonio Division.

On May 13, 1964, because of being affected by a force reduction and concurrent loss of his position in another gang, Laborer A. G. Martinez exercised his seniority and displaced junior Laborer E. Williams on Extra Gang No. 330. He worked on said extra gang as a laborer until June 1, 1964 when he requested permission to "displace" the claimant in a letter reading:

"Alpine, Texas
June 1, 1964

Mr. D. S. Gibson
Division Engineer
654 E. Commerce Street
San Antonio, 5, Texas

Dear Sir:

On May 13, 1964, I displaced junior assigned laborer on Extra Gang 330, and being older in seniority than presently assigned Laborer-Driver on this gang would like to displace Laborer-Driver Jessie

that he be permitted to drive the truck which entitled him to the six (6) cents per hour above the laborer's rate, and his request was granted. Rhodes, who had been driving the truck and receiving the six (6) cents per hour arbitrary, claimed that he had been displaced by Martinez under Rule 1, Article III of the current agreement and made protest which was appealed to Carrier's Manager of Personnel by Petitioner's General Chairman by letter dated August 12, 1964. Copy of that letter is attached as CARRIER'S EXHIBIT "A".

Attached as CARRIER'S EXHIBIT "B" is copy of a letter addressed to Petitioner's General Chairman by Carrier's Manager of Personnel, dated September 25, 1964, declining the protest. Attached as CARRIER'S EXHIBIT "C" is copy of General Chairman's letter of December 11, 1964, to Carrier's Manager of Personnel, which restated Organization's position.

(Exhibits not reproduced)

OPINION OF BOARD: On May 13, Laborer A. G. Martinez of the San Antonio Division with seniority date of November 25, 1943, displaced a junior Laborer on Extra Gang No. 330, under the terms of Article III, Rule 1 (a) and (b) of the Maintenance of Way Agreement.

On June 1, 1964, Laborer A. G. Martinez applied for the position of Laborer Driver and was given the position, because he had seniority over Jesse Rhodes who held the position of Laborer Driver.

Mr. Rhodes claims that he be returned to his position of Laborer Driver on the grounds that Martinez, had exercised his seniority when he replaced a Junior Laborer and therefore could not exercise his seniority under the terms of the Agreement as contained in Article III, Rule 1 (a) and (b). Also he be compensated for all monetary loss.

There is no question in the first instance of the Agreement when Martinez was allowed to exercise his seniority and displace Junior Laborer E. Williams on Extra Gang No. 330.

Now as to his rights of applying for the position of Laborer Driver.

In the Agreement of March 22, 1963, which states, Laborer may not exercise his seniority to position of Laborer Driver unless they were qualified per this Agreement.

The Agreement of March 22, 1963 does not prevent a Laborer providing he has met the qualification and his seniority to apply for the position of Laborer Driver it does however give a laborer who can qualify an opportunity to exercise his seniority and receive the rate of 6 cents per hour over the laborer rate.

Therefore, under the terms of the Laborer Driver Agreement the Claim is denied.

It is intended, however, that the conclusion reached in this case is applicable only to the facts and circumstances of this particular case and is not to be considered in any respect as a precedent award.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 23rd day of September, 1966.