

**Award No. 186**

**Docket No. 164**

**2-N&W-SM-'37**

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 16, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)**

**NORFOLK AND WESTERN RAILWAY COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** Request that seniority standing of C. L. Currin, pipefitter, East Radford, Virginia, be corrected by changing it from July 4, 1922, to September 20, 1933, at which time he was promoted from helper semi-skilled worker to pipefitter.

**EMPLOYEES' STATEMENT OF FACTS:** The facts in the case are that one C. L. Currin entered the service of the company on July 4, 1922, a few days after the shopmen's strike became effective. It was discovered that he was unable to perform the work and was reduced to an apprentice under date of September 16, 1922, and worked as such until November 1, 1923. He was then given the status of a helper semi-skilled worker and these employes were later changed to the classification of shop hands. Evidence submitted indicates that these men were shown on the pipefitter helpers' seniority roster. Currin was continued on this roster until he was again promoted to the position of a mechanic on September 20, 1933, at which time he was also given seniority rights as a mechanic.

It appears that during the month of August, 1935, the then representative of the employes entered into an agreement with management to give Currin seniority as a pipefitter back to his original date of service.

**POSITION OF EMPLOYEES:** Pipefitter Currin was employed as a pipefitter by the Norfolk and Western Railway Company at its East Radford, Virginia shops on July 4, 1922. He was unable to perform the work assigned to him as a mechanic and he was demoted to the classification of helper apprentice as of September 16, 1922. He worked thereafter at such demoted classification and assignment until November 1, 1923, at which time he was promoted to the classification of helper semi-skilled worker, who are now classified as shop hands, rate, seventy-three cents per hour, and which class of employes are carried on helper seniority list. We offer as Exhibit 1 the seniority list of sheet metal workers at Roanoke shops, Roanoke, Virginia.

Therefore, we claim that Mr. Currin's seniority should date from the time he received the basic rate of pay for mechanics, eighty (80¢) cents per hour, which has been the past practice on the Norfolk and Western Railway. We offer as Exhibit 2, page 20 of the current agreement:

OCCUPATION	RATES PER HOUR
Sheet Metal Workers (which includes pipefitters)	\$0.80

Further, we offer as Exhibit 3 the agreement between the Norfolk and Western Railway and the employes of the mechanical department, effective December 5, 1933, and we call the Board's attention to the last paragraph of Rule 35, page 17, which reads as follows:

"If an apprentice is retained in the service, upon completing apprenticeship his seniority rights as a mechanic will date from the time of completion of apprenticeship."

We call the Board's attention to the fact that Mr. Currin was promoted from helper semi-skilled worker to pipefitter, September 9, 1933. We also offer as Exhibit 4, the present agreement, effective August 22, 1935, which agreement was accepted by the Sheet Metal Workers' International Association after recognition by the Norfolk and Western Railway, and call the Board's attention to the last paragraph of Rule 35, page 18, which reads as follows:

"If an apprentice is retained in the service, upon completing apprenticeship, his seniority rights as a mechanic will date from the time of completion of apprenticeship."

We claim that to give Mr. Currin seniority over Mr. Galloway and Mr. Foster is a violation of the above quoted rules.

We also contend that this change in seniority was discrimination against Mr. Galloway and Mr. Foster because of their affiliation with the Sheet Metal Workers' International Association. As evidence of this contention, may we cite, this case was handled twice prior to 1935, and Mr. Currin was denied seniority over Mr. Galloway and Mr. Foster. Also at this time we were getting ready to vote the Norfolk and Western and the officers of the mechanical department associations were trying to fix Mr. Currin before they lost out.

To further substantiate our claim, we offer Exhibits 5 and 6, which prove conclusively that Mr. Currin did other than pipe work and pro-rated Sundays and holidays with machinist helpers for approximately three years.

**POSITION OF CARRIER:** C. L. Currin is employed as a pipefitter in the carrier's shops at East Radford, Virginia, and his seniority was settled by agreement on August 26, 1935, with General Chairman R. J. Brennan of the Association of Sheet Metal Workers, Helpers and Apprentices, then the accredited representative of sheet metal workers employed by this carrier. The settlement was covered by letter addressed by the superintendent of motive power of the carrier to General Chairman Brennan under date of August 28, 1935, copy of which letter is marked Exhibit A.

The carrier asserts that this dispute was handled in accordance with the provisions of the amended Railway Labor Act, and settled between the duly authorized representative of the employes and the carrier; that this settlement constituted an agreement disposing of the case and that your Board is without authority to set it aside.

**OPINION OF THE DIVISION:** The only question in this case is whether or not there is a dispute pending and unadjusted for the consideration of this Board. If there is no such dispute, this Board has no jurisdiction to determine the merits of the employes' claim.

There appears to have been some prior difficulty concerning the question of employe Currin's seniority. It further appears that during the month of August, 1935, the then representative of the employes entered into an agreement with the management whereby Currin's seniority as a pipefitter was recognized to date back to his original date of service. It is the contention of the employes that the agreement was one improper on its face. There is nothing in the record to establish that the agreement made between the carrier and said representative of the employes with regard to Mr. Currin's

seniority was improper under the rules. On the contrary, the question of fact presented by this case is controversial, and merit can be found on either side of the controversy.

The fact that a short time after the agreement was made, the right of representation of the employes was given to the Federated Shop Crafts cannot alter the situation. The only question to be here decided is whether or not the then representative had the authority to act in such a matter at that time. Obviously, he did have that right and we can find no basis for upsetting or overruling an agreement made between a duly authorized representative of the employes and the carrier.

There is nothing in the record to permit a finding of fraud or other misconduct in reaching the agreement respecting Currin's seniority.

The security of labor organizations rests on the principle of sustaining the decisions and actions of the duly authorized representatives of labor groups. Were we to begin reversing such decisions and making exceptions to this principle, we would be establishing precedents that would be detrimental to and that would eventually destroy the very structure of collective bargaining.

The claim of the employes must be denied.

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

The parties to said dispute were given due notice of hearing thereon.

The matter here presented was settled and completely disposed of by the employes and the carrier in August, 1935, and there is no dispute pending and unadjusted before this Board.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.