

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 76, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (BOILERMAKERS)

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Boilermaker Julius A. Budde, Marquette, Iowa, be reinstated to service with seniority rights unimpaired and paid for all time lost since September 1, 1937, until reinstated.

EMPLOYEES' STATEMENT OF FACTS: Julius A. Budde was absent from work from April 11, 1933, because of sickness until he reported for work September 1, 1937.

POSITION OF EMPLOYEES: That Julius A. Budde was denied his seniority rights by certain officers of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, although he reported his illness according to Rule 16 which says:

"An employe detained from work on account of sickness or for any other good cause, shall notify his foreman as early as possible."

In support of Mr. Budde's position, we are submitting Exhibits A, B, C, D and E; also correspondence and affidavits relating thereto.

We believe that the above exhibits show that Mr. Budde was discriminated against, and, therefore, respectfully ask your Honorable Board to reinstate him with his original seniority rights unimpaired and paid for all time lost since September 1, 1937, until reinstated.

CARRIER'S STATEMENT OF FACTS: Julius A. Budde enjoyed a seniority date as boilermaker at Marquette, Iowa, of March 5, 1918, and upon completion of work April 10, 1933, Mr. Budde left the Marquette roundhouse and up to the present time has not reported back for work although junior boilermakers have enjoyed employment since that date.

POSITION OF CARRIER: The facts in this case are that upon completion of work April 10, 1933, Mr. Budde left the Marquette roundhouse and has never returned to the roundhouse to report for work since that date.

Resulting from correspondence with Mr. Budde, arrangements were made for a meeting at Marquette, Iowa, November 7, 1938, at which the following were present:

Albert Kasten
P. L. Mullen
J. H. Bell
Lloyd Hakeman
R. A. Sayre
Julius Budde

General Chairman, Boilermakers
Division Master Mechanic
Roundhouse Foreman
Lead Boilermaker
Local Chairman, Boilermakers
Boilermaker

and the information developed at that meeting indicated that subsequent to April 10, 1933, the local chairman and other boilermakers had gone to Mr. Budde's home to try to get him back to the roundhouse for work. However, all efforts to get him back to work failed. At this meeting Mr. Budde first introduced sickness and claimed his wife had called the roundhouse and told someone he was sick and would not be to work. However, Roundhouse Foreman Bell, Assistant Foreman Rousell, Boilermaker Foreman Hakeman, also the roundhouse clerk, all insist that neither Budde nor his wife had ever called the roundhouse or the office on the phone indicating that he was sick.

Master Mechanic Mullen discussed the matter with Boilermaker Budde at different times and during one conversation at Dubuque, Mr. Mullen indicated to Boilermaker Budde that he should have reported for work at Marquette and was informed by him that he would not work for Roundhouse Foreman Bell and for that reason he would not report for work. Mr. Budde reiterated this statement at the meeting held at Marquette, November 7, 1938; however, submitted herewith please find communication from Roundhouse Foreman J. H. Bell addressed to Master Mechanic P. L. Mullen, August 31, 1937 (Exhibit 1), which will indicate there was no discrimination against Budde and that the roundhouse foreman had nothing whatever against him.

A few months after April 10, 1933, Mr. Budde left Marquette with his family without notifying anyone at the roundhouse that he was leaving, also failing to give them his new address. By reason of no information having been obtained from Budde as to the reason for him not reporting for work, effective with the July 1, 1937, seniority list, his name was dropped therefrom, which was concurred in by the local committee for the boilermakers at Marquette, because, as developed during the meeting November 7, 1938, an effort had been made to get Mr. Budde to return to the service, which he refused to do; therefore, it was felt his name should no longer be continued on the seniority list.

Marquette, Iowa, being a town of some eight hundred people, it is believed your Board will very readily realize that in the event Budde had been sick he certainly could have reported the facts to the roundhouse foreman in which event his seniority would, of course, have been protected. However, apparently Budde did not interest himself sufficiently to contact the roundhouse foreman and secure a leave of absence, or, in the event he was sick, to have made these facts known, but to the contrary he simply assumed the "do nothing" attitude and even though he last performed work April 10, 1933, he took no action with respect to returning to work until some time in the fall of 1937, and he then discovered his name had been removed from the seniority list effective July 1, 1937.

In giving consideration to Mr. Budde taking no action with respect to protecting his seniority, also the understanding had with the local committee that he had forfeited his seniority, evidence of which is shown in communication addressed to Roundhouse Foreman J. H. Bell, December 16, 1938, by the boilermaker committee (copy submitted and marked Exhibit 2), we are sure this Board will agree favorable consideration should not be given at this time to the request that he be reinstated with seniority rights unimpaired and paid for all time lost since September 1, 1937, until reinstated, because his seniority having been terminated results directly from the lack of interest shown by Mr. Budde with respect to retaining his seniority as a boilermaker at Marquette, Iowa.

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 waived right of appearance at hearing thereon.

Julius A. Budde failed to protect his rights as an employe and as prescribed by the rules of agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1939.