

Award No. 787

Docket No. 717

2-Erie-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: (a) That on May 26, 1941, at Port Jervis, New York, the carrier did and still persists in violating Rule 17 (a) and Rule 18, in that senior Car Inspector Dallas J. Albers was laid off in lieu of junior Car Inspector George Myers.

(b) That Car Inspector Dallas J. Albers be compensated for all time worked by Junior Car Inspector George Myers since May 26, 1941, to the conclusion of the lay off.

EMPLOYES' STATEMENT OF FACTS: The seniority standing in the car department at Port Jervis, New York, of Carmen Albers and Myers follows:

Dallas J. Albers, October 27, 1924.
George Myers, January 1, 1925.

In a force reduction on May 26, 1941, Dallas J. Albers was laid off and George Myers was retained in the service, handling the tools of and performing the work of carman in addition to leading and directing the handling of work.

POSITION OF EMPLOYES: The employees contend that the tour of duty of George Myers consists of performing regularly the work of carman outlined in the Carmen's Special Rule 2, in addition to handling and directing the work of carmen, which subjects him to the application of Rule 17 (a) and Rule 18 of the agreement, effective May 1, 1929.

Rule 17 (a) in part reads:

"When the forces are reduced, seniority as per Rule 18 will govern. . . ."

Rule 18 provides for point seniority, with four subdivisions of carmen which follows:

- "(a) Patternmakers
- (b) Upholsterers
- (c) Painters
- (d) Other carmen."

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.

In Award No. 406 this Division held:

"It has been generally recognized that a leader who performs the regular work of his class in addition to leading and directing the work of his gang comes within the rules of agreement of such craft. A leader who devotes all of his time to supervisory work is in reality a foreman."

The question which confronts us is whether or not Myers was a leader or a foreman. The mere designation of an individual as a foreman by the carrier does not make him a foreman. It depends upon the duties which he performs.

The employes contend that regardless of Myers' paper classification, he is not a foreman within the meaning of the term foreman wherever used in Rule 19. If Myers was but a leader, this claim would come within the provisions of Award No. 406 and would have to be sustained. However, if Myers is a foreman in reality, then Rule 19 (c) would apply and the claim would have to be disallowed. It is impossible from the record before us to ascertain whether or not the duties Myers performed are those of a leader or of a foreman and it necessarily follows that this case will have to be remanded to the parties to develop the facts with the right to resubmit same if the employes so desire.

AWARD

Claim remanded in accordance with findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of May, 1942.