

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L. (MACHINISTS)
ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES.—Shall F. Garguillo be credited with seniority date of July 26, 1933, as a machinist helper, Jersey City shops, and be compensated for time lost?

POSITION OF EMPLOYEES.—That F. Garguillo is entitled to retain his machinist helper seniority rights by reason of an agreement made locally between the local committee and the general foreman.

POSITION OF CARRIER.—That F. Garguillo is not entitled to retain his machinist helper seniority rights because of the language of Rule 18 of the agreement in affect between the Erie Railroad Company and the mechanical department employees, dated May 1, 1929.

FINDINGS.—The Second Division of the National Railroad Adjustment Board, upon the whole record and all the evidence, finds:

The carrier and the employee involved in this dispute are respectively carrier and employee 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, and the hearing was held August 28, 1935.

That a furloughed employee who obtains employment in some other capacity has the right to build up seniority in whatever capacity employed during the interim that he is furloughed.

That Garguillo, by reason of the understanding or agreement entered into between the general foreman and the local committee at Jersey City, should not have been deprived of his seniority rights as helper.

That although there has developed conflicting statements by both parties to the aforesaid understanding or agreement, as to its purpose, it is sufficiently clear that the real purpose and intent in permitting Garguillo to return to the position of helper was to protect Garguillo's seniority rights as machinist helper in the event that the senior machinist resumed work.

That, however, since both parties to this arrangement failed to record the facts of the agreement so as to avoid dispute, and further, in view of the fact that while Garguillo was deprived of his seniority rights as helper, he still retains rights as machinist, the following award is rendered:

AWARD

F. Garguillo shall be given seniority date of July 26, 1933, as a machinist helper at Jersey City shops.

Based upon the facts developed in this case, claim for compensation for wage loss is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 10th day of October, 1935.