

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 7, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)
NORTHERN PACIFIC RAILWAY COMPANY**

DISPUTE: CLAIM OF EMPLOYEES.—That Jack Siegfried be reinstated as a carman at South Tacoma, Washington, with seniority rights as of March 23, 1931.

JOINT STATEMENT OF FACTS.—In 1931 a car building program under which 1,000 refrigerator cars were built was started at South Tacoma shops. This work was completed in October, 1932.

Mr. Siegfried was employed as a shop inspector in connection with this car building program on January 22, 1931. He was removed from this position on March 22, 1931, and transferred to position of car repairer on March 23, 1931, working in that capacity until May 1, 1931, on which date he was assigned to position of leading carman. He remained on the position of leading carman until October 7, 1932, at which time there was a reduction in force and Mr. Siegfried, together with other men, were laid off because their seniority did not entitle them to hold a position.

At the time Mr. Siegfried was laid off on October 7, 1932, an agreement effective as of October 16, 1923, and amended effective as of April 1, 1929, was in existence between the Northern Pacific Railway Company and the Associated Organizations of Shop Craft Employes of the Northern Pacific Railway Company. Mr. Siegfried was governed by the provisions of that agreement. Rule 22 (f) of the said agreement between the Northern Pacific Railway Company and the Associated Organization of Shop Craft Employes of the Northern Pacific Railway Company reads as follows:

“RULE 22 (f). Unless employe is notified in writing when laid off that his services are such that he cannot be re-employed, he will retain his former seniority date, provided he is re-employed within six (6) months, and may be required to take physical examination, as provided for in Rule 37, further provided he keeps his employing officer informed of his address and any change in address and reports for service promptly, but in no case more than ten (10) days after notification is sent by mail or telegraph to his last address. Failing to report at the earliest possible time he will forfeit all seniority rights.”

On September 2, 1933, an agreement was entered into between the Northern Pacific Railway Company and the Associated Organizations of Shop Craft Employes of the Northern Pacific Railway Company under which the time limit of six months, as stipulated in Rule 22 (f) of the shop craft's agreement, then in effect, which rule is above quoted, was extended to twelve months.

Mr. Siegfried did not perform any service for the Northern Pacific Railway Company as a shop craft employe or in any other capacity subsequent to October 7, 1932.

In September, 1935, there was an increase in the car force at South Tacoma and on September 23, 1935, Mr. Siegfried and other men called at the car foreman's office to ascertain the prospects of securing work. After conversation with Mr. Siegfried, the general car foreman discovered that he was then forty-seven years of age.

The rules governing the operation of the employment bureau and instructions to employing officers of the Northern Pacific Railway, effective May 1, 1926, and which were in effect on September 23, 1935, contain the following rule:

“RULE 17. No person less than sixteen (16) years of age may be employed. No person inexperienced in railroad work, i. e., having had no previous

experience in the capacity for which application is made, over thirty-five (35) years of age, and no experienced person over forty-five (45) years of age, shall hereafter be taken into the service."

POSITION OF EMPLOYEES.—Prior to January 1931, Mr. Jack Siegfried, carman at 4133 South K Street, Tacoma, Washington, was steadily employed by the Pacific Car and Foundry Company at Renton, Washington.

In January the shop superintendent at South Tacoma sent to the Pacific Car and Foundry Company for a man as shop inspector. Mr. Siegfried was sent by the superintendent of the Pacific Car and Foundry Company to the South Tacoma shops for an interview. During this interview, the superintendent of the shops handed him a letter to read which was from St. Paul and contained instructions to secure a man from the Pacific Car and Foundry Company at Renton. He was told they wanted a man to install what is called the progressive or line system of railroad car construction, which was in use by the Pacific Car and Foundry Company at Renton. The superintendent of the Tacoma shops informed him that if he would accept the position as shop inspector, his salary would be \$175.00 per month, and that this job as shop inspector was a newly created position, so that no one would have seniority over him. He also stated that this position would be permanent. On this assurance, he accepted the position and moved his family and household goods to Tacoma as requested and went to work January 22, 1931.

On March 23, 1931, he was bumped by orders from St. Paul. He was unable to find out why, and the local officials stated they did not know. He was then put to work as repairer at 65¢ per hour and worked on such until April 29, 1931.

During this time he joined the shop craft union, and on May 1, 1931, he was made leading carman. His duties were to supervise all work on railroad cars being constructed under the line system, which system he helped to put under way.

About July, 1931, the shops began operation on part time; this continued until October 1932. On October 7, 1932, he was laid off on account of reduction of force. On September 23, 1935, he was notified to report for work, which he did. After waiting about thirty minutes to be signed up, the superintendent's clerk informed him that they could not reinstate him, as he had passed the age of 45 years during his furlough. His age was 43 at the time he was hired, but nothing was said about an age limit.

On account of his being given to understand, when accepting the position with the Northern Pacific, that no one would have seniority over him, and the position would be permanent, and because of the fact that had he stayed with the Foundry Company, he would still be working, we maintain he should have been put to work in his turn on September 23, 1935, regardless of age, that being the date he was notified to report to work, which he did.

POSITION OF CARRIER.—In January, 1931, a car building program was inaugurated in the Northern Pacific South Tacoma shops. This program covered the building of 1,000 refrigerator cars. The officers and foreman of the Railway Company worked out the details of this car building program. In view of the number of cars to be constructed it was felt that a man who had had experience with a car building company should be secured to act as a shop inspector. The duties of this position were to make studies of the various operations and recommend to the foreman any changes that appeared to be desirable in order to bring the work to an efficient and economical conclusion. The position of shop inspector did not carry with it any supervisory duties; the man occupying this position having no authority to direct the work.

Acting upon these instructions, the officers of the railway consulted with the officers of the Pacific Car and Foundry Company who recommended Mr. Siegfried. Mr. Siegfried at that time was not employed by the Pacific Car and Foundry Company, having left their service on December 31, 1930. Carrier's Exhibit A is a blue print reproduction of Mr. Siegfried's application for employment with the Northern Pacific Railway in January, 1931. On the reverse side of this form Mr. Siegfried stated that he had terminated his service with the Pacific Car and Foundry Company on December 31, 1930, and gave as his reason for leaving the service of that company that there was "no work."

Mr. Siegfried took service with the Northern Pacific Railway Company on January 22, 1931, as a shop inspector in connection with the car building program. After a two months' trial on this position it developed that he did not have the particular fitness which was necessary to successfully fill this position. Instead

With regard to removal of Mr. Siegfried from the position of shop inspector on March 22, 1931: The carrier has before stated that after Mr. Siegfried took service, it developed that he could not successfully fill the position of shop inspector. Mr. Siegfried knew why he was removed from the position of shop inspector and made no complaint at that time, but whether he knew it or not is immaterial, as there was no promise made to him that he would be continued in that position regardless of whether he could successfully handle it. However, instead of entirely dispensing with his services he was given a position as a car repairer on March 23, 1931, and was assigned to position of leading car repairer on May 1, 1931, and remained in the latter position until October 7, 1932, when he was affected by a force reduction. The Northern Pacific Railway treated Mr. Siegfried very fairly in giving him employment as a car repairer and later assigning him as a leading car repairer.

As to the allegation that this man was notified to report for work on September 23, 1935: The carrier has shown that the general car foreman had not notified Mr. Siegfried to report for work, as the foreman did not know whether Mr. Siegfried was then employed. Mr. Siegfried was in the same position as a number of other men who had previously worked for the Northern Pacific and who were seeking employment. Some of these men were employed as new employes. Mr. Siegfried was not employed, as he was over the age limit. Inasmuch as Mr. Siegfried had lost his seniority rights, there is no basis for his statement that he was notified to report for work, as his taking service was contingent upon his physical qualifications to fulfill the position and whether he was then within the age limits within which he could be employed. Mr. Siegfried was so advised on September 23, 1935, when he called on the general car foreman and at that time was apparently satisfied that he was not eligible for employment.

With regard to the claim that Mr. Siegfried was promised permanent employment: as before stated, Mr. Siegfried was not given to understand that his position would be permanent. The facts in the case clearly show that such a promise could not and would not have been made, as it was understood by all concerned that the position of shop inspector would not last beyond the completion of the car building program. There would be no object in promising Mr. Siegfried permanent employment in order to attract him to the Northern Pacific, as he was at that time out of work. This is shown by his application for employment with the Northern Pacific.

The issue in this case is the application of schedule rules to determine the seniority status of Mr. Siegfried. The essential facts are that he was laid off as a carman on October 7, 1932. Under the rules and agreements in effect, which were applicable to Mr. Siegfried, his seniority rights expired on October 6, 1933. The only way that he could secure seniority rights as a carman subsequent to October 6, 1933, would be by employment in that capacity. As he was not employed as a carman subsequent to October 6, 1933, there is plainly no basis under schedule rules for his claim that he is entitled to any seniority rights as a carman. The schedule rules in effect at the time that he was laid off on account of force reduction on October 7, 1932, and which were also in effect at the time that he made application for service on September 23, 1935, are controlling, and decision in this case must be made on the basis of these rules. The carrier has shown that under these rules there is no ground for Mr. Siegfried's claim for seniority rights as a carman.

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 evidence presented in this case does not support the claim of employes.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 27th day of July, 1936.