

Award No. 307
Docket No. 297
2-IC-MA-'39

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

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

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: First. That the agreement was violated when machinist apprentices were put to work as machinists at Paducah new shops, Paducah, Ky., when furloughed machinists were available.

Second. That the machinists' seniority list at Paducah new shops be corrected to show proper seniority dates of these former apprentices, immediately following 8-12-33, as if no violation had occurred.

EMPLOYES' STATEMENT OF FACTS: In 1933, a number of apprentice boys, after finishing their apprenticeship, were hired as machinists at Paducah new shops with a verbal understanding between themselves and the committee representing employees at that time that they would not claim any seniority. These boys worked for a short period of time and were furloughed. They were hired again early part of April, 1934, as new men and were required to sign a waiver stating they would not claim seniority. Some time after April 1, 1935, the management and former General Chairman Bass agreed to restore these apprentice boys on the seniority list with their original 1935 seniority date ahead of the furloughed machinists, who immediately protested this action.

A list of the apprentice boys and the dates hired as machinists at Paducah new shops is below; also a list of the furloughed machinists, showing dates and points where furloughed and dates transferred to Paducah new shops, etc., is attached:

Name	Date employed in 1933	Days worked	Date re-employed in 1934
H. E. Bougeno	5-12-33	108	Between April 1 and 15, 1934
H. E. Houser	6- 6-33	28	" "
E. M. Evans	6- 8-33	24	" "
C. E. Harrison	6- 8-33	23	" "
F. E. Hewitt	6- 8-33	27	" "
B. M. Green	6- 9-33	12	" "
Carl Wunch	6-12-33	12	" "
J. R. Lynn	6-12-33	10	" "
C. R. Futrell	8- 8-33	12	" "

4. The duly authorized local committee accepted this roster as correct on May 29, 1935, and have accepted as correct all rosters posted subsequently.

5. The employees concerned in this dispute now enjoy their correct seniority dates and the dates should not be changed in any way.

6. The practice of establishing seniority in this case was in accord with Awards Nos. 4, 86, 126, 127, 128, 129, 130, 131, 134, 185, and 186, issued by this Division of the Adjustment Board.

7. This case has been handled in accordance with the provisions of the agreement. There has been no violation of any of the rules of the agreement, and, in all fairness to these employees and to all employees in general, the carrier requests that the Board decline the claim.

OPINION OF DIVISION: This case has become a complicated one due to the numerous and conflicting handlings of it. That which might have been very simple is now complex. Nine apprentices completed their apprenticeship at the Paducah shops a short time prior to the increase of force at the shops. They were given temporary employment, later furloughed and, still later, rehired. Other furloughed men, having been brought into the Paducah shops from other points, the question of the seniority date of these nine apprentices came into dispute and continued to be a dispute from 1933 to the present submission of this question to the Second Division.

It will clarify the problem somewhat to review the facts of the case from the point of view of what should have been the proper procedure under the circumstances. The carrier was enlarging its work at Paducah. It has some furloughed men at Paducah and some at other points and it had the nine apprentices, who had previously completed their apprenticeship, at a time when no jobs were available. When the enlargement of work took place, the men, having the first right, were the furloughed men at the Paducah shops. They were all taken on and the next group was the group of furloughed men at other points who wished to transfer to Paducah. When such men were placed, new men could be added and the first of the new men would, presumably, be the nine apprentices. The apprentices had no right to jobs at that time until furloughed men of the Paducah shops and furloughed men from other points were given an opportunity to take jobs at Paducah. A reasonable time had to be allowed before apprentices or new men could be taken on, because men at other points would be entitled to a reasonable time to determine whether they would transfer to Paducah and also time to make the transfer. When such transfers were completed and additional men were needed, the apprentices could have been hired and would have taken their proper place on the seniority list below the furloughed workers. They could not be placed on the seniority list above furloughed workers who transferred to the Paducah shop. Their seniority status could, in that event, have been fixed simply by reference to the books of the company and no question could have arisen.

The facts which complicated the situation were as follows: First, these men were put to work in 1933. They were let out a few weeks later and again brought back in 1934. It was understood that their employment would be temporary and that they would not take seniority status at once. This move was obviously to protect the seniority roster for furloughed workers who wished to transfer to Paducah. The union and the local management were very evidently holding the apprentices back because, if they were hired and took seniority at the date of hiring, they would have taken away the rights of seniority of other men. All of this was done before the contract was taken over by the Railway Employees' Department of the American Federation of Labor.

The problem of these apprentices was inherited by the new employees' representatives. The local committee of the International Association of Machinists handled the matter in 1935 and requested that the nine apprentices be given seniority as of the date when first employed in 1933. This was

concurred in by General Chairman Bass of the International Association of Machinists. The arrangement had the effect of giving the apprentices seniority above some furloughed workers and objections continued to be raised against the action of the local committee. Other questions of seniority also arose and the whole matter was carefully investigated by the representatives of the International Association of Machinists and, eventually, a seniority roster was developed which was satisfactory, with the exception of the status of the nine apprentices.

The carrier insists that the nine apprentices were actually hired in 1933, and that seniority should date from the time of hiring. The carrier rests upon the local agreement with the local committee, approved by General Chairman Bass of the International Association of Machinists. The carrier insists also that the granting of seniority requested by the employees would be an arbitrary fixing of seniority dates for these workers. The employees answer that if these men were not entitled to seniority, under the general rules, the local committee and the general chairman of one of the federated unions could not change the general rules laid down for all of the crafts. The seniority rule, applicable to all employees, could not, the employees insist, be waived with respect to one of the crafts.

The conclusion to which we are forced to arrive is that the apprentices were not entitled to a seniority status in 1933 above furloughed workers of the Paducah shops and those who wished to transfer to the Paducah shops. They could not properly have been employed at that time and have been given seniority over others having a prior right. Their seniority must have been subordinate to workers previously employed. The action of the local committee and of General Chairman Bass could not change the rules laid down for all of the crafts in the agreement and disputes arising out of such action could properly come before this Division. In the very nature of the case, there must be an arbitrary date established for the seniority of these men. A reasonable time had to be allowed for furloughed workers to transfer to the Paducah shops before the nine apprentices could be hired and given a seniority status. The rules do not indicate how much time should be allowed. The carrier made reasonable efforts to notify all furloughed men and would be required to wait only long enough to give the furloughed men a reasonable chance to respond. The date established in the employees' claim August 12, 1933, is a reasonable date when the facts of the transfer are taken into consideration. Men who transferred before that date were entitled to seniority status above the nine apprentices. The nine apprentices should have seniority status immediately following the last name with seniority listing as of the 12th of August, 1933.

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.

AWARD

The position of the nine apprentices on the seniority list should be as of the date August 12, 1933, immediately following the name of J. E. Ethridge.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois this 14th day of February, 1939.