

Award No. 361

Docket No. 345

2-Erie-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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

PARTIES TO DISPUTE:

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

ERIE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That James P. English was returned to service as a machinist at Jersey City roundhouse in violation of General Rules 14 (b) and 16 (c) (hereafter quoted), and that those who suffered loss of compensation by reason of this action should be compensated for such losses and James P. English removed from service at Jersey City roundhouse and furloughed senior machinist returned to his position.

EMPLOYEES' STATEMENT OF FACTS: General Rules 14 (b) and 16 (c) of "RULES AND RATES OF PAY FOR MECHANICAL DEPARTMENT EMPLOYEES Composed of MACHINISTS, BOILERMAKERS, BLACKSMITHS, SHEET METAL WORKERS, ELECTRICIANS and CARMEN, also their APPRENTICES and HELPERS" read as follows:

"Rule 14. (b) Mechanics promoted to position of Foremen will retain their full seniority as mechanics at the point from which promoted. If through a reduction in force or for any other reason a Foreman is demoted he shall have the privilege of taking a job on the trick he was working on at the time of promotion, provided that no other mechanic is displaced. When set back at his own request, he shall take whatever job that may be open, seniority to govern."

"Rule 16. (c) All Foremen transferred or craftsmen promoted and transferred, by the Railroad Company, shall retain their seniority as craftsmen at the home point."

Rule 18, paragraph 1, reads:

"Seniority for all classes of employes covered by this agreement shall be arranged according to departmental work as set out below,
* * * *"

Rule 19, paragraph 1, reads:

"Mechanics or apprentices, regularly employed as such, shall do work as defined in the special rules of each craft * * * *"

That James P. English was hired on February 3, 1919 as a roundhouse foreman and did not work as a machinist. March 18, 1923, he was trans-

Williams was taken off as foreman and permitted to assume rights as a boilermaker. As a result of some local conferences, it was determined that the proper seniority standing for Williams would be December 16, 1928; however, this was disputed, the management holding that in accord with the long existing practice, when Fred Williams was employed as a foreman, he was also entitled to craftsmen's rights, and that the seniority date should properly be January 12, 1918. The organization contended that the date established as a result of action by the local committee, December 16, 1928, was correct.

The District Adjustment Committee in their findings reported in accord with Exhibit A.

After this new evidence had been located, the question of seniority for James P. English was discussed at this office on August 15, 1938, and we directed to the attention of General Chairman Wiesner of the machinists, that this evidence had not previously been given consideration, and that under this interpretation of the rules, even though Mr. English had been employed as a foreman, he would still be entitled to craftsmen's seniority rights as of February 3, 1919.

Our position at this conference was certified in writing to General Chairman Wiesner on August 24, 1938, and we were of the opinion after the conference that this matter was closed with the return of Mr. English to service as a machinist at Jersey City, effective August 29, 1938. The next information we received in the case was a memorandum from the new general chairman, Wm. E. Nestor, dated November 12, 1938, and shortly thereafter we were informed that the case had been submitted to the Railway Employees' Department for further handling, which resulted in a later ex parte submission to your Board.

We believe that your Board should deny this claim for the following reasons:

1. According to available records, Mr. James P. English was employed as a machinist February 3, 1919, and paid the going rate for machinists until March 11, 1919, at which time he first appears in our records on a monthly rate of pay. There was no authority for any monthly rate of pay prior to that time for Mr. English.

2. Exhibit A, submitted, definitely supports James P. English's rights to seniority as a mechanic at Jersey City, regardless of whether or not the affidavits submitted by the employees are correct.

3. There is no supporting data or other record that would sustain the contentions of the employees in these affidavits.

4. Mr. James P. English is rightfully entitled to seniority as a machinist at Jersey City from February 3, 1919, in accord with the past practices and in accord with mutually agreed upon interpretations of rules.

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.

That the only written record of the employment of James P. English, machinist, is the employment record taken from the files of the employment bureau at New York City, all other written records being destroyed.

That said record establishes that James P. English was employed on February 3, 1919, as a machinist at Jersey City.

That such written record was apparently made under such circumstances as to indicate that it is accurate and under such circumstances should be given greater weight than the testimony of numerous individuals based on recollection of circumstances and events of many years ago.

James P. English was employed as machinist February 3, 1919, and, therefore, is entitled to seniority as a mechanic at Jersey City.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd Day of August, 1939.