

Award No. 445
Docket No. 437
2-CRI&P-CRI&G-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY
COMPANY**

CHICAGO, ROCK ISLAND AND GULF RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That management violated 3rd paragraph, Rule 26 of the current agreement at Trenton, Missouri, resulting in loss of wages by Carman Roy L. Gilmore to which he is entitled. By reason and virtue of the fact Carman Roy L. Gilmore was laid off out of turn and later returned to work for short periods, claim is made for compensation in favor of Carmen Ora P. Whitfield and Vernon U. Bell.

EMPLOYES' STATEMENT OF FACTS: Effective January 31, 1939, a bulletin was posted at Trenton, Missouri, signed by A. Thornburgh, car foreman, reducing forces at that point resulting in Carmen Gilmore, Whitfield, Bell and Bullock being laid off in their respective order; however Carman H. R. Smartt was retained in service, although a junior man, because of assignment as wrecking engineer.

The seniority roster at Trenton is as follows:

1. Bittorf, John A.	Aug. 7, 1922
2. Booe, Neville A.	Sept. 18, 1922
3. Wilson, Howard T.	Oct. 3, 1922
4. Gilmore, Roy L.	Oct. 12, 1922
5. Whitfield, Ora P.	Nov. 19, 1922
6. Bell, Vernon U.	Nov. 20, 1922
7. Smartt, H. R.	Dec. 8, 1922
8. Bullock, Timothy S.	Dec. 8, 1922
9. Kroeger, August C.	Jan. 22, 1923
10. Driskell, Wm. O.	Jan. 23, 1923
11. Ellis, John M.	Jan. 29, 1923
12. Lewis, Delos F.	July 9, 1923

POSITION OF EMPLOYES: The third paragraph of Rule 26, reads:

"In the event of further reduction in expenses in department affected, forces will be reduced. When the force is reduced or jobs are abolished men affected will be privileged to place themselves according to their seniority. Seniority will govern in laying off men."

Rule 26 provides as follows:

“ * * *

In the event of further reduction in expenses in department affected, forces will be reduced. When the force is reduced or jobs are abolished men affected will be privileged to place themselves according to their seniority. Seniority will govern in laying off men. * * *

Mr. Gilmore, having been displaced from his position of car repairer, was entitled, on basis of seniority (ability being sufficient), to displace the junior carman, H. R. Smartt, but as he was not qualified to act as wrecker engineer, he was not permitted to displace Mr. Smartt.

POSITION OF CARRIER: Rule 95 of the current agreement reads, in part, as follows:

“Regularly assigned wrecking crews, including engineers and firemen will be composed of carmen and helpers, and will be paid for such service under Rule 9.”

Carman Smartt was assigned as wrecking engineer (a position named in Rule 95) and car repairer because he was the only bidder and was competent. As has been the practice and recognized interpretation of the rule, the carrier is entitled to have a competent carman filling the assignment of wrecking derrick engineer and such a man, when filling the position of engineer, is entitled to work as a car repairer.

Mr. Gilmore has never qualified as a wrecker engineer and made no effort to qualify as a wrecker engineer when he was a member of the wrecking crew some time ago. The carrier is willing that he be given every opportunity possible to qualify as a wrecking derrick engineer and, likewise, is willing at all times to negotiate with the carmen and their representatives relative to protection of the service when a reduction in force is made which would result in a wrecking derrick engineer being displaced if seniority alone is involved.

We are willing at all times to negotiate with the carmen and their representatives to arrange as early as possible for the qualification of a carman senior to Mr. Smartt, and this other carman, when qualified, will be permitted to take the position of wrecker engineer when he is entitled to it by the contract. This was the position taken by Supt. Motive Power G. P. Trachta in his letter of May 17, 1939, addressed to General Chairman Arrington, and referring to the qualification of men, reading, in part, as follows:

“I am sorry you failed to bring this up at the time of our last conference but the first time you are in Chicago again would be glad to talk to you about this.”

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 method of reducing forces in accordance with seniority provided in current agreement Rule 26—“ * * * Seniority will govern in laying off men * * * ”—is that the junior men are to be furloughed and senior men retained in the service and is similar to the principle involved in this Division's Awards 40 and 183.

When there is a question of filling certain positions from which junior men are furloughed it becomes a matter of negotiation between the parties to the agreement. The record indicates the lack of mutual understanding between the parties to this dispute and does not contain proof of wage loss.

AWARD

The procedure followed in the reduction of force was improper, therefore, if there has been any monetary loss sustained by employees involved, the matter will be adjusted between the parties to this dispute.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 28th day of March, 1940.