

Award No. 465

Docket No. 461

2-NYC-MA-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Frank M. Swacker when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That K. L. Hotaling has no proper rights to seniority on the machinists' seniority roster at the Kingston, N. Y., enginehouse.

JOINT STATEMENT OF FACTS: On September 23, 1937, K. L. Hotaling was employed at Kingston, N. Y., enginehouse to fill a vacancy due to a machinist's absence. On February 6, 1939, Mr. Hotaling was placed on a regular job due to the death of Machinist P. Joyce.

POSITION OF EMPLOYEES: That K. L. Hotaling was employed at Kingston engine terminal as a machinist in violation of Rule 29 of the current agreement between the New York Central Railroad Company and System Federation No. 103, and subsequent understandings.

We herewith quote Rule 29 of the current agreement, agreed upon during negotiations and effective as of December 1, 1921:

"Rule 29.

In event of a reduction in force at any point and a shortage of help existing at any other point, employes laid off will have preference over men not in the employ of the company. Employes so transferring shall take rank behind all employes in the service at the point to which transferred, and will retain seniority at the point from which transferred until thirty (30) days after date of restoration in forces at point of former employment, seniority to govern."

That in order to have a uniform practice in the transferring of employes under Rule 29, at conference in New York City, November 12 and 13, 1924, the following understanding was agreed upon:

"The employes requested an interpretation of Rule No. 29, dealing with reduction in force at one point and shortages existing at other points. It was understood that, where it was necessary to reduce the force at a given point and additional forces were needed at other points, the officials of the Equipment Department would notify the General Chairmen of the respective Crafts promptly as to the number of men in each craft which would be required to fill out the force at the points where shortages existed, the General Chairmen to notify the employes so that all who desire may take advantage of the opportunity to work provided for in Rule No. 29."

The whole sum and substance of this case is that, notwithstanding the efforts of both the terminal foreman and the local committeeman to find a furloughed employe, no such employe was interested in the extra work at Kingston and every one was satisfied to let Hotaling cover it. However, when a regular job became vacant some sixteen months later, furloughed employes at other points became interested and wanted it. It was then too late as Hotaling had acquired a seniority status at Kingston which gave him preference over men furloughed in other seniority districts who had no seniority rights at Kingston. To deny him such preference would set up an incongruous situation in which he could work extra at Kingston for countless years, but so long as men furloughed in other districts desired the permanent positions when vacancies occurred he never would have any seniority to acquire a regular position. Clearly, the committee's contention is untenable and should be denied.

Carrier's Exhibit No. 1

"SENIORITY ROSTER

Department—Motive Power
Craft—Machinist

Location—Kingston
Date—Jan. 1, 1938.

No.	Name	Occupation	Seniority Date	
			Present	Prior to 9-19-22
1.	P. Joyce	Mach. Inspt.	9-19-22	5-18-13
2.	J. Whalen	Gang Leader	10-16-22	
3.	H. Spardie	Machinist	4-11-26	
4.	F. A. Ruskie	Term. Fore.	5- 1-26	
5.	G. O. Wolfersteig	Machinist	3- 7-29	
6.	G. S. Emmet (R)	"	2- 1-32	
7.	R. J. Breen (F)	"	2- 1-32	
8.	W. Kamm (F)	"	6-29-35	
9.	K. L. Hotaling (F)	"	9-23-37	

Office of General Foreman, North Bergen, N. J. Jan. 25, 1938."

Carrier's Exhibit No. 2

"SENIORITY ROSTER

Department—Motive Power
Craft—Machinist

Location—Kingston
Date—January 1st, 1939.

No.	Name	Occupation	Seniority Date	
			Present	Prior to 9-19-22
1.	P. Joyce	Mach. Inspt.	9-19-22	5-18-13
2.	J. Whalen	Gang Leader	10-16-22	
3.	H. Spardie	Machinist	4-11-26	
4.	F. A. Ruskie	Term. Fore.	5- 1-26	
5.	G. O. Wolfersteig	Machinist	3- 7-29	
6.	G. S. Emmet (R)	"	2- 1-32	
7.	R. J. Brenn (F)	"	2- 1-32	
8.	W. Kamm (F)	"	6-29-35	
9.	K. L. Hotaling (F)	"	9-23-37	

Office of General Foreman, North Bergen, N. J. January 25, 1939."

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.

There is insufficient evidence in the record to justify petitioners' contention that Mr. Hotaling is not properly entitled to his position on the Kingston seniority roster.

There is no question but that the management did, as a matter of fact, fail to comply with the agreement to call on the general chairman to supply a furloughed man for a vacancy such as that which had occurred here. Instead, the management called in the local chairman and he suggested Mr. Hotaling. Furloughed men at other points would, under the supplementary agreement, have a right to the work if they wished it. However, had the carrier followed the agreement and notified the general chairman of the vacancy and had he been unable to supply a furloughed man, the carrier would then have been entitled to do what was done here—that is, hire a man from the outside.

No attempt was made to prove that the general chairman could have supplied a man who wanted to work as indicated. Had he been unable to supply a man, then the carrier would be entitled to do what it did do and in that case Mr. Hotaling would be entitled to the benefits of the contract just the same as any other man entering the service, which would include seniority from the date of his entry.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 25th day of June, 1940.