

Award No. 496

Docket No. 486

2-CI&L-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

CHICAGO. INDIANAPOLIS AND LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That Charles Payne be restored to service at Frankfort, Indiana, and paid for all time lost at rate of seventy-eight cents (78¢) per hour, eight (8) hours per day and six (6) days per week, from April 14, 1939, until restored to service on account of being furloughed April 14, 1939, in violation of Rules 30, 26 and paragraph B of miscellaneous rule, page 24 of current agreement; also violation of Section 6 of the Railway Labor Act, the violation being assignment of carmen from other seniority points to do the work formerly performed by Payne.

EMPLOYES' STATEMENT OF FACTS: Charles Payne was employed as a carman at Frankfort, Indiana, since November 2, 1937, having been transferred to Frankfort, Indiana from Indianapolis, Indiana. His duties at Frankfort consisted of inspecting cars in interchange, making necessary repairs to cars at his point; also, he was required to make necessary repairs to any and all cars set out for hot boxes or other defects at other stations as far north as Delphi, Indiana, a distance of twenty-five (25) miles and all cars set out for hot boxes or other defects at other stations as far south as Kirklin, a distance of approximately eleven (11) miles. However, Frankfort, Indiana, was designated as Payne's seniority point and headquarters. This has been a seniority point for one or more carmen who have been employed there over a period of approximately fifty years or more.

Under date of April 8, 1939, Charles Payne of Frankfort, received a notice from the master mechanic that at the expiration of the usual five-day notice, or at the close of his work day on April 14, that he would be laid off indefinitely in a reduction in forces; also, for him to leave keys to buildings with agent at that point. (See Exhibit A.)

POSITION OF EMPLOYES: We contend in this case that the seniority rules of our Federated Agreement have been violated, inasmuch as the master mechanic issued a letter of instructions about the same date he issued the notice of reduction in force, said letter of instructions to his supervisory forces provided for carmen to be used from three other seniority points to do any necessary car work to be done at Frankfort, and in the territory formerly covered by Payne. (See Exhibit B.)

Carmen have been sent from each of those other seniority points a great number of days to do the work that Payne formerly did. Also, carmen

agreement or contract is concerned, providing of course that the work is abolished along with the position."

Since the volume of work at Frankfort has diminished to an average of three minutes (3") per work day (See Exhibit No. 7 and paragraph 8 of carrier's statement of facts), the position in fact ceased to exist and the management's notice to Mr. Payne of April 8, 1939, was merely an official recognition of that fact, and by the official abolition of the position, Frankfort, in reality, ceased to constitute a seniority point.

The carrier submits:

1. There has been no violation of Rules 26, 30 or paragraph B of miscellaneous rule, page 24 of current agreement.
2. There has been no violation of Section 6 of the Railway Labor Act.
3. Position was discontinued in accordance with the terms of the agreement, and in the same manner as in prior years.
4. The present method of performing the work does not constitute a violation of the agreement.
5. An award should be rendered in favor of the carrier.

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.

Car Inspector Charles Payne was properly furloughed, but his furlough did not destroy his seniority rights. When the work requirements of a seniority point or assignment have decreased to the extent that the services of even one employe are not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change.

The Division is of the opinion that each of the parties should respect the rights of the other and that an equitable disposition can be made by the representatives of the parties. The Division remands this question to the parties directing that they make an earnest effort to effect an equitable adjustment of the dispute.

AWARD

Claim remanded without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1940.