

Award No. 511

Docket No. 568

2-IC-FO-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Mr. J. J. Ames be restored to service under the Firemen and Oilers' schedule at Centralia, Illinois, and be paid as water tester (33¼¢ per hour) from October 1, 1936, to May 28, 1937, and as acetylene generator attendant (55¢ and 60¢ per hour as established by agreement) from May 28, 1937, to August 13, 1937, and as fireman (49¼¢ per hour) from August 13, 1937, to date.

JOINT STATEMENT OF FACTS: The Centralia power plant consists of two sections. Four Babcock and Wilcox 250 H. P. Stirling boilers and two boiler feed pumps are located in the east section. The engine room is opposite back of boilers and on two floors, on west side. On the first floor are three oil pumps, two vacuum heating pumps and one 1600 CFPM air compressor. On the upper floor are two 1000 CFPM air compressors, one fire pump, three steam turbines and generators, and switch and gauge boards.

The steam driven turbo generators, installed several decades ago along with pole lines, having become obsolete or in such a state of repair that they could not continue to supply the increasing demands, arrangements were made to purchase electrical energy starting August 23, 1936. This necessitated adjustments in force as the transition was effected.

The force in the power plant before the change was:

1st Shift	2nd Shift	3rd Shift
1 Engineer	1 Engineer	1 Engineer
2 Firemen	1 Fireman	1 Fireman
1 Laborer		1 Laborer

As the manufacture of electrical energy and operation of switch board were discontinued, steam from power plant was used for operating air compressors and heating purposes only.

The positions of engineer on the second and third shifts were abolished on August 27, 1936, and J. J. Ames and F. J. Greear were laid off. October 1, 1936, bulletin was posted for application for water test job. No applications were filed by employees in service at the point and F. J. Greear was assigned to the job.

May 28, 1937, bulletin was posted for applications for acetylene generator attendant which was bid in by J. J. Ames. Mr. Ames was awarded this position and instructed to report at a specified time and place to receive instructions on how to handle the work.

and, when he did not take it, it was awarded to the next oldest applicant. In view of this it is hard to believe the local chairman would let this pass without question if he was not aware that Mr. Ames did not desire to retain his employment relationship, especially when he did not ask for a leave of absence under the provisions of Rule 22.

Evidence is presented herein to substantiate the procedure followed and to find otherwise would require holding this in an imaginative vacuum. The agreement would be wholly meaningless if an employe when called could fail to report, and then months later allege he was not given the opportunity to take the position he had bid in.

The real reason Mr. Ames did not desire to return to the service of this carrier is that previous to March, 1937, he was operating an oil station at Centralia, and since that date has been employed by the Illinois Iowa Power Company per carrier's Exhibit G. From this, it will be noted, his earnings for June, 1937, were \$129.00 or 13% greater than if he had returned to the service of this carrier as a generator attendant at fifty-five (55¢) cents per hour. It is also apparent why he would not be interested in a water tester's job paying 33¼ cents per hour. This exhibit shows that he has worked almost regularly since March 1937 for another company receiving wages far in excess of what he would receive under the existing schedule.

This case has been discussed in conference on several occasions and while the evidence is clear that Mr. Ames forfeited his seniority per provisions of existing schedule, the undersigned, desiring to be tolerant and impartial, offered to reinstate him with seniority rights unimpaired; however, his representative refused this settlement contending he was entitled to compensation for time lost. Pay for time lost is entirely unjustified as his earnings during the period claimed were in excess of what he would have earned had he complied with schedule requirements.

Carrier contends there has been no violation of any rule of the existing agreement, that no extenuating circumstances warrant his reinstatement, and asks that the claim be denied.

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.

J. J. Ames held seniority as stationary engineer under seniority sub-division Class A of the agreement of April 1, 1935, and was laid off in reduction of force August 27, 1936. He held no displacement rights in other classes coming under the agreement, although he was assigned to position of stationary fireman for approximately ten days, which appears to have been an erroneous assignment.

Ames, therefore, held seniority as stationary engineer and had no priority rights over other employes in Classes B, C, and D.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of October, 1940.