

Award No. 634

Docket No. 494

2-CI&L-CM-'41

**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. 32, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY

Originally a dispute, covered by our Docket No. 494, Award No. 499, was submitted by System Federation No. 32, Railway Employees' Department, A. F. of L. (Carmen) and the Chicago, Indianapolis & Louisville Railway to this division for adjustment:

"Dispute: Claim of Employees: That C. S. Scott be restored to service at New Albany, Indiana, and paid for all time lost at the rate of 78¢ per hour, eight (8) hours per day and six (6) days per week, from October 9, 1939, until restored to service on account of being furloughed in violation of Rules 30, 26 and paragraph 'B' of Miscellaneous Rule, page 24, of the current agreement, also violation of Section VI of the Railway Labor Act, the violation being the assignment of carmen from other seniority points, and other than carmen, to do the work formerly performed by Scott."

The following (Award No. 499) was rendered by the Division on July 31, 1940:

"AWARD

Claim remanded without prejudice."

Under date of March 13, 1941, the Division addressed the following letter jointly to Mr. B. M. Jewell, President, Railway Employees' Department, A. F. of L., and Mr. Anton Anderson, Assistant Chief Operating Officer, Chicago, Indianapolis & Louisville Railway, which is self-explanatory:

"This will acknowledge letter of February 18, 1941, from Mr. Jewell, President, Railway Employees' Department, and also letter of March 3, 1941, from Mr. Anderson, Assistant Chief Operating Officer, Chicago, Indianapolis and Louisville Railway, showing that the parties were unable to make an equitable adjustment of the disputes remanded to them under our Dockets 480, 481, 483, 484, 486, 487, 488 and 494. Therefore, the Second Division will accordingly resume consideration of the above dockets and render final awards on the original records."

Under date of March 26, 1941, the Division advised the parties that this case is deadlocked and that it will be submitted to a referee when a referee is selected. Both of the parties having requested a hearing before the referee,

the request was granted and hearing before Referee John P. Devaney was held on May 20, 1941, and on June 26, 1941, the Division, with Referee John P. Devaney sitting as a member thereof, rendered the following findings and award:

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.

When the work requirements of a seniority point or assignment have decreased to the extent that the service of even one employe is not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change. The disputants have failed to reach an agreement. It is unfair to require the carrier to maintain an employe at a seniority point when the service demands have no reasonable relation to such maintenance unless the agreement compels it. Likewise, it is unfair to permit the carrier to invade the seniority rights of an employe at a particular point because service demands have decreased. The employes and the carrier can negotiate an agreement covering the specific situation which will consider and recognize the equities and rights of each. For this reason, the dispute is remanded with directions to adjust it and report the agreement reached to this Division within ninety days from this date in lieu of the Division determining the matter as it sees and evaluates the equities.

AWARD

Claim remanded without prejudice to either disputant in accordance with the above Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 26th day of June, 1941.