

Award No. 727

Docket No. 697

2-GN-CM-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee R. F. Mitchell when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 101, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

GREAT NORTHERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Mr. Andrew B. Schuler, carman, employed at St. Cloud, Minnesota, be restored to service and compensated for all wage losses incurred since May 20, 1940, as the result of being held out of service in violation of Rule 20, paragraph "D," of the current agreement.

EMPLOYES' STATEMENT OF FACTS: That Andrew B. Schuler entered the service of the Great Northern Railway as a carman at St. Cloud, Minnesota, on July 25, 1922, and continued in service as such continuously until the fall of 1932 when he was laid off in reduction of force. That Mr. Schuler was recalled to service in the early part of 1933 at St. Cloud as a carman in accordance with his seniority at that point, and worked intermittently until sometime in the early part of October 1937, when he was again laid off due to a reduction in force. That on May 20, 1940, the carmen force at St. Cloud, was again increased and the following carmen all junior in seniority to Mr. Schuler were restored to service:

Danzl, John	Reding, John	Lahr, Ed.
Reber, Fred	Hoefler, Henry	Lauerman, Math.
Meemken, Henry	Zimmer, Francis	Jost, Nick
Kirchner, Alphonse	Peterson, Abe	Ruhland, Peter
Kirchner, Sylvester	Maus, Nick	Schreifels, Aloys
Komoruski, Fred	Sartel, Edwin	Scherer, Math.
Behlsen, Theo.	Feddma, Albert	Lopinski, Fred
Hedlund, Wm.	Fuerstenberg, Joseph	Kosloski, John
Schaefer, Raymond	Kuffel, Francis	Sopkoviak, Jos. M.
Woods, A. C.	Gratzek, Fred	Beckers, Hubert

POSITION OF EMPLOYES: This case has been handled in accordance with the requirements of Rule 27 of the agreement between System Federation No. 101 and the Great Northern Railway Company, and we contend that Mr. Andrew B. Schuler, should be reinstated to service and compensated for all wage losses incurred as the result of his being unjustly deprived of employment, in violation of paragraph D of Rule 20 of the existing agreement which reads as follows:

"When forces are increased the last man laid off shall be the first man put back, subject to all the provisions of this rule."

even though such former member took no part in the World Series' games, or was by that time no longer a member of the team. The employes and carrier, in like manner, have voted to **former** employes a preference to the regaining of the employe status he has lost, as against new men; but neither employes or carrier has, by any means, **continued** his employe status during the interim.

The carrier having herein shown that claimant is not now, nor has he been during the continuing period of his claim, an employe under the schedule; that he has not since October 9, 1938, had any seniority rights to exercise; that his eligibility to reemployment as against new men has, in no way, been infringed upon; that no new men have been employed; and that the rule relied upon by claimant is itself subject to prior application of such considerations, it submits that this Board must hold that no violation of schedule has occurred, and that until it does occur, no claim for remedial action, or of payment of penalty by the carrier, can be sustained.

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 no dispute in this record but that Schuler, under Rule 20, having been laid off for more than a year, lost his seniority date, and was cut off the seniority list. The rule then provides:

"Employes laid off in reduction of force whose seniority is not sufficient to permit their return to service within one year will be cut off the seniority list but will thereafter be re-employed in preference to hiring of new men."

Under this part of the agreement Schuler is entitled to be re-employed in preference to the hiring of new men and the carrier under this rule is bound to re-employ him before it employs new men.

Whether or not any new men have been employed we are not able to ascertain from the record and the case is referred back to the parties to ascertain whether or not any new men have been employed.

AWARD

Case referred back to parties to ascertain whether any new men have been employed with the right of claimant to resubmit his claim if the record shows that new men have been employed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 30th day of March, 1942.