

Award No. 908

Docket No. 831

2-L&N-CM-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (CARMEN)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, Rule 14 (b) thereof, Carman L. P. Culley forfeited his seniority rights as a Carman with the carrier and that accordingly his name shall be removed from the carmen's seniority roster at Paris, Tennessee.

EMPLOYEES' STATEMENT OF FACTS: At Paris, Tennessee, the carrier regularly employed L. P. Culley as a carman on the 7:00 A. M. to 3:30 P. M. shift.

Carman L. P. Culley laid off on April 28, 1942, through to and including May 25, 1942, during which time he was engaged in other employment without the approval of the carmen's local chairman or other committeeman of the carmen.

On May 20, 1942, the carmen's local committee requested that L. P. Culley's name be removed from the carmen's seniority roster at Paris, Tennessee, which the carrier declined to do, and thereupon L. P. Culley returned to duty on May 26, 1942.

POSITION OF EMPLOYEES: That L. P. Culley laid off and engaged in other employment from April 28 to May 25, 1942 inclusive, without the concurrence of either the local committeeman or the local chairman of the carmen's craft; having only the concurrence of General Foreman W. H. Cooper. That Mr. Cooper, in granting such leave, arbitrarily assumed a high prerogative not conferred upon him by the current agreement, either expressly or impliedly. The employes contend that when Culley laid off from April 28 to May 25, 1942, and engaged in other employment (operating a cleaning and pressing establishment, of which he was at that time purportedly the owner) without the concurrence of the local chairman and the local committeeman of the carmen, that he (Culley) automatically forfeited all seniority rights with the carrier and should be stricken from the carmen's seniority roster at Paris, Tennessee.

The controlling agreement over the offense committed by Culley, from April 28 to May 25, 1942 inclusive, is dated and effective as of April 1, 1938 (Seventh Edition), and Rule 14 (b) thereof reads as follows:

have consistently concurred in such requests—and this is the lone and only case denied. We believe that your Honorable Board will appreciate the situation in which Mr. Culley finds himself and the action taken by him is that which would have been taken by any other individual in like circumstances, and therefore that the request of the carmen's organization that his name be removed from the seniority roster of carmen is without merit and will be denied. It will be noted that this man's leave was handled absolutely in accordance with the agreement during the period he was off from October 4, 1939, until his last request was denied and he returned to work on May 26 and worked until June 30 on which date he injured his back rather seriously and his doctor has not permitted him to return to the service up to the present time.

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.

The record discloses that Carman Culley was absent on leave from April 28, 1942, to and including May 25, 1942, and while so absent engaged in employment other than that of carman without the approval of local chairman and committeeman. Under the terms of Rule 14 (b) Carman Culley severed his relations with the company.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.