

Award No. 1517

Docket No. 1443

2-NYC-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Carmen)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Mr. A. Kiebler, furloughed department foreman from Collinwood Wood Mill, Collinwood, Ohio, is not entitled to the seniority he now holds in Linndale Car Shops, Linndale, Ohio;

2. That Mr. Kiebler's seniority date in Linndale should be May 2, 1949, the day he commenced work there.

EMPLOYEES' STATEMENT OF FACTS: On April 28, 1949, a merger agreement was drawn up and signed by Messrs: M. J. McGuinness, general chairman of the carmen, New York Central System; L. Wiegand, general chairman, Cleveland, Cincinnati, Chicago & St. Louis Railway and F. R. McKernan, general chairman of the firemen and oilers, New York Central System; and A. D. Bingman, assistant to general superintendent, equipment locomotive, for the carrier, which is submitted herewith and identified as employees' Exhibit A.

On April 21, 1949 a notice was posted on the bulletin board at the Collinwood wood mill stating that effective April 30, 1949, certain positions would be abolished, a copy of which is submitted herewith and identified as employees' Exhibit B. On April 23 another notice was posted creating positions for ten men under the carmen's craft at Linndale, these bids to close April 29 at 4:00 P. M., a copy of which is submitted herewith and identified as employees' Exhibit C.

Mr. Kiebler worked as a foreman up to and including April 30, 1949.

Effective May 2, 1949, the successful bidders were transferred from Collinwood to Linndale, with their seniority date at Collinwood. Effective May 2, 1949, Mr. Kiebler transferred to Linndale as a new man and was placed on the roster with a seniority date of May 2, 1949. This date was later changed by the carrier allowing Kiebler the seniority date he held at Collinwood.

The agreement effective July 16, 1946, as subsequently amended, is controlling.

- (4) That both Kiebler and Mickovic properly bid on and were awarded positions mentioned in (3);
- (5) That as a result of being the successful bidders for the carmen's positions referred to in (4), both Kiebler and Mickovic were properly permitted to transfer to Linndale on May 2, 1949, "with their full seniority and have their names included on the appropriate seniority roster (s)" at that point, as provided for in the third paragraph of the so-called merger agreement of April 28, 1949 (employees' Exhibit A);
- (6) That there are no essential differences in the circumstances under which Kiebler and Mickovic transferred to Linndale on May 2, 1949, their bids having been accepted, the positions awarded and their seniority handled on a fair and impartial basis strictly in accordance with the terms of the so-called merger agreement of April 28, 1949 (employees' Exhibit A), without the least taint of discrimination;

therefore—

the claim in the instant case is wholly without merit and should be denied in its entirety.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 issue in this dispute is whether or not, under the current agreement governing the employment of carmen, A. Kiebler is entitled to the seniority date he now holds at Linndale Car Shops, Linndale, Ohio.

Foremen as such are not subject to the controlling agreement. However, since Mr. Kiebler had been notified that he would be furloughed it cannot be said he relinquished his supervisory position voluntarily. In these circumstances he was privileged to exercise his seniority as a carman and was therefore entitled to the same consideration accorded the other carmen who transferred from Collinwood to Linndale under the Memorandum of Agreement dated April 28, 1949.

AWARD

Claim denied per above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of January, 1952.