

Award No. 3689

Docket No. 3485

2-RDG-CM-'61

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 109, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O. (Carmen)**

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEES: 1. That under the current agreement Coach Cleaner Mark P. Mullee, Jr. was improperly denied the right to exercise his seniority rights over a junior coach cleaner, when position he held was claimed by a senior employee March 13, 1958.

2. That accordingly the Carrier be ordered to pay the aforesaid Mark P. Mullee, Jr. the eight (8) hours he lost as the result of this denial of his seniority rights.

EMPLOYEES' STATEMENT OF FACTS: Coach Cleaner Mark P. Mullee (hereinafter referred to as the claimant) was employed by the carrier as a coach cleaner, Wayne Junction Electric Car Shop, Philadelphia, Pennsylvania, May 29, 1950; advanced to car repairer helper at Bridgeport, Pennsylvania, October 20, 1955; subsequently advanced to car inspector October 29, 1956 at which classification he was employed at the time he was displaced by a senior employee March 13, 1958, hours of service being 3:00 P. M. to 11:00 P. M.

Thursday, March 13, 1958, after having reported for duty; at 3:20 P. M. the claimant was notified by phone that he had been claimed off the position he was then holding, claim effective at the close of his tour of duty.

Claimant, upon receipt of this information, given him over the phone, and, having no claim to exercise as a car inspector or a helper, immediately called the office of general foreman, Wayne Junction Electric Car Shop to advise him that he was exercising his seniority as a coach cleaner over the junior coach cleaner working at that point, whereon he held seniority as such, and would file his claim in writing as soon as possible; his tour of duty prevented him from doing so at the time. He was advised that a claim over the phone would not be allowed.

Claimant, in compliance with advice given him over the phone March 13, 1958 and in order to protect his seniority rights, put in his appearance prior to the starting time of the first shift 8:00 A. M., March 14, 1958, for the purpose of filing his claim in writing.

tion is made and lists will be furnished the Local Committee.

"In case of a reduction of force or the abolishing of a position, employees affected shall be allowed to exercise their seniority rights in displacing junior employees in their respective seniority districts.

"Employees will exercise such displacement rights, so that men affected may be placed within fifteen (15) days and will do so without expense to the Carrier."

The Board will note that the above quoted rule provides, in part, that men will exercise displacement rights so that those affected may be placed within fifteen days, and further that displacement rights will be exercised without expense to the carrier. The rule, however, is silent as to the manner of exercising displacement rights and carrier submits herewith and makes a part hereof, as its Exhibit C-1, letter dated June 29, 1956 from superintendent M. P. & R. E. to his staff, copies to the general chairmen of System Federation No. 109, outlining agreed upon procedures with respect to the exercise of displacement rights. Carrier desires to point out that superintendent's letter states in part that as a result of meeting with the general committee representing the shop crafts affiliated with System Federation No. 109 it was agreed to adopt a uniform displacement form, effective July 1, 1956, which **must be used in all cases**. In view of the foregoing, carrier submits that it was clearly proper for the local supervision at the electric car shop to inform claimant that they could not recognize or allow his oral claim and require from him a written claim on the prescribed and agreed upon form. In this regard, the Board should also note that at the time of Mr. Mullee's attempted claim on March 13, 1958, Mr. P. Campbell, local shop representative at that time, was called to the office phone and he advised claimant that his claim could not be accepted over the phone and that Mr. Mullee would have to make necessary arrangements to fill out displacement form. Carrier submits that clearly there is no merit in the organization's contention that it was improper to deny Mr. Mullee's oral claim and require him to submit claim in writing.

With respect to the contention of the organization that claimant did in fact complete and sign the required form and was available for work on or before the start of the first trick at 8:00 A. M. on March 14, 1958, carrier desires to point out that when this contention was advanced on the property, a meeting was arranged on October 2, 1958 between the superintendent of car shops, supervisor of rates, general foreman of the electric car shop and his clerk, and Local Chairman DiMascio and claimant to discuss this question. The general foreman of the car shop and his clerk stated they did not see claimant until after 9:00 A. M., March 14, 1958. All of the discussions at this meeting, in carrier's opinion, supported the statements of the general foreman and his clerk and consequently carrier does not concur or agree with the organization's contention that claimant completed the form and was available for work before 8:00 A. M., March 14, 1958.

Under the facts and circumstances outlined hereinbefore, carrier maintains that the handling of Claimant Mullee in the instant case was in accord with existing rules and understandings in effect on the property and was not improper or in violation of any rules governing carmen. Therefore, carrier maintains that the claim as here submitted by the carmen of System Federation No. 109 is without merit or justification and carrier requests the Board to so find and deny same.

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 this meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

It is conceded that this claim should be sustained if Claimant signed and presented the required replacement form prior to the start of the shift at 8:00 A. M. on March 14, 1958.

The evidence is conflicting, but it is hardly conceivable that Claimant would not then have been present, since on the preceding day he had given notice by telephone that he would displace Burns from that shift. This view of the evidence is confirmed by the replacement form, which is shown as effective on that date and was approved by the Employing Officer and General Foreman.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 27th day of February, 1961.