

Award No. 4608

Docket No. 4530

2-NYC-FO-'64

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee P. M. Williams when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. - C. I. O.
(Firemen and Oilers)**

NEW YORK CENTRAL RAILROAD (WESTERN DISTRICT)

DISPUTE: CLAIM OF EMPLOYEES:

1. That the carrier arbitrarily violated the provisions of Rule 14, Paragraph (d) of the current agreement by refusing to give preference to Messrs. Steve Simko and Mike E. Egnot furloughed Firemen & Oilers employes at Ashtabula Harbor Car Shop, which the carrier had abandoned on January 9, 1961:

2. That the claimants be compensated for all wage loss from April 3, 1961, until they were restored to the service of the carrier on a permanent position at Ashtabula Old Car Shop, Ashtabula, Ohio.

EMPLOYEES' STATEMENT OF FACTS: On January 9, 1961, the New York Central Railroad Company, hereinafter called the carrier, permanently abandoned Ashtabula Harbor Car Shop, Ashtabula, Ohio, causing the furlough of all Firemen & Oiler employes at this Car Shop, which included Classified Laborers Steve Simko and Mike E. Egnot, hereinafter called the claimants.

On April 3, 1961, there existed vacancies for Classified Laborers at Ashtabula Scrap and Reclamation Plant, and on this date furloughed Firemen & Oiler employes Steve Simko and Mike E. Egnot made application for the vacancies under the provisions of Rule 14.

The carrier refused them employment on their class of work and instead, on April 28, June 16 and 26, and also July 3, 1961, hired furloughed Blacksmith Helpers to work on classified and other laborers' positions at Ashtabula Scrap and Reclamation Plant.

This was done even though furloughed Firemen & Oiler employes Steve

As to part "2" of the employes claim, Claimants Simko and Egnot later were employed as laborers at another car operation, i.e., Ashtabula Old Car Shop. The duties of the positions were similar to those which they had performed at Ashtabula Harbor Car Repair Track. The seniority rights they have acquired for laborer's work at the Old Shop is as follows:

	Seniority Date
Steve Simko	5-22-61
M. E. Egnot	6-10-61

Based on the facts in evidence, the carrier submits there is no justification for the claim that the claimants be compensated for wage loss due to being denied employment at Ashtabula Scrap & Reclamation.

CONCLUSION:

The carrier has shown that this claim is completely lacking in merit and its selection of employes for the two available positions at the Scrap & Reclamation Plant was a justifiable exercise of its prerogative, not in violation of the Agreement. In addition, Awards of the N.R.A.B. support carrier's position in this dispute.

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.

Parties to said dispute were given due notice of hearing thereon.

After the Carrier had abandoned its Ashtabula Harbor Car Shop and furloughed the two Firemen & Oiler Claimants herein, each of them made application for work at the Carrier's Ashtabula Scrap & Reclamation Plant.

It is not disputed that opening existed in their class at the time claimants applied for jobs.

The Claimants rely on Rule 14 (d) of the applicable agreement to support their position, it provides:

"In the event of the permanent abandonment of any point resulting in furlough of employes covered by this agreement, such employes will, upon application, be given preference over new employes to any work in their class at other points."

Preference and consideration are not synonymous terms. The fact that claimants were given an opportunity to apply for positions denied them is not sufficient to satisfy the requirement of the quoted rule. Moreover, no valid reason is presented to us by the Carrier for its failure to give claimants an opportunity to work at the Scrap & Reclamation Plant.

Even though we believe that the Carrier violated the above quoted rule, we find that the claim for compensation should be limited to the net wage loss between claimants and the two men who actually secured the positions sought by them.

AWARD

Claims sustained in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: William B. Jones
Chairman

E. J. McDermott
Vice Chairman

Dated at Chicago, Illinois, this 10th day of December, 1964.