

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L. (MACHINISTS)
ERIE RAILROAD COMPANY**

DISPUTE: CLAIM OF EMPLOYEES.—Whether Machinists C. B. Miller and C. O. Agler, demoted foremen, should or should not be returned to their home point in accordance with Rule 14, paragraph B, and paragraph C of Rule 16 of the shop crafts' agreement in force on the Erie Railroad.

POSITION OF EMPLOYEES.—

“**RULE 14. (a)** Mechanics in service will be considered for promotion to positions as Foremen.

“(b) Mechanics promoted to position of Foremen will retain their full seniority as mechanics at the point from which promoted. If through a reduction in force or for any other reason a Foreman is demoted he shall have the privilege of taking a job on the trick he was working on at the time of promotion, provided that no other mechanic is displaced. When set back at his own request, he shall take whatever job that may be open, seniority to govern.

“**RULE 16. (c)** All Foremen transferred or craftsmen promoted and transferred, by the Railroad Company, shall retain their seniority as craftsmen at the home point.”

Rule 14, paragraph B, provides that mechanics promoted to positions of foremen will retain their full seniority at the point promoted from. In this case, Mr. Miller was promoted from Kent, O., and Mr. Agler was promoted from Hornell, N. Y., so that those are their respective home points and where their seniority is and not in Susquehanna, Pa.

There is no reason why the language in the rules involved should be construed to mean anything but what is written. The question has been raised concerning the date of application of our agreement. It was the intent to cover foremen by this rule, otherwise it would not have been included in the agreement. The company has established a number of precedents of this character. The case of Mr. George Thibaut, who was promoted from a machinist at Meadville in 1906 and became a master mechanic at Buffalo, Susquehanna, and then district master mechanic in the Eastern Region, who was then demoted to master mechanic at Port Jervis, and in 1931 was further demoted to a machinist and sent to his home point, Meadville, where he is now working. This man was promoted long before the present agreement was written. Then there is the case of William Pierce, promoted from Hornell, N. Y., going to Susquehanna as foreman. After serving a good many years at that point he was demoted and sent back to his home point, Hornell. Only last year Machinist Foreman Gilles at Huntington was taken off the job for being absent during working hours. He was sent back to his home point, Hammond, Ind. In 1932 we had a case on the Erie Railroad known as the Vogelsinger case. This case, because of the failure of the interested parties to come to a satisfactory agreement, was referred to a District Adjustment Board set up in accordance with Rule 22, now removed from our agreement. This Board, composed of two representatives of the company and two of the employes, failed to agree. Mr. Lyle Jackson, Attorney at Law and Federal Commissioner for Hornell, N. Y., was called in as a Referee. When said Board met, a decision was rendered which provided that Mr. Vogelsinger held seniority rights at Dummore Shop, his home point, and no other point. This was a parallel case, Vogelsinger being promoted from Dummore as foreman, last worked as foreman in Hornell shop when he was demoted. Company sought to put him to work in the Avoca Shop as a journeyman.

POSITION OF CARRIER.—During the year 1919, at which time Machinists C. B. Miller and C. O. Agler were selected as foremen at the locomotive shop, Susquehanna, Pa., it was the prevailing custom to permit members of the various crafts, when they had been selected and accepted transfer to other points or terminals as supervising foremen, to build up seniority in their regular craft as craftsmen at the point or terminal to which transferred and from the date they had been transferred as foremen. This practice had been in effect for many years and recognized as justified because it was fair and reasonable to assume that if a craftsman transferred to a new point and remained there for a considerable time and then was displaced for reasons beyond his control, he, if he so decided, should have the same rights as a craftsman to work at that point, which had been his home during the intervening period.

It was under this plan that these two Machinists, Miller and Agler, when they became supervising foremen at Susquehanna locomotive shop, Susquehanna, Pa., earned their seniority as machinists and which is now and has been for a number of years the basis on which they selected positions. We now, therefore, submit as Exhibit (a) a copy of roster covering Machinists' Craft at Susquehanna, Pa., dated July 1, 1926. It will be noted that Machinist C. B. Miller appears on this roster as No. 17 with a seniority date of September 1, 1919, and that C. O. Agler appears on this roster as No. 16 with a seniority date of May 29, 1919. Both of these dates are the dates on which the employes mentioned began work as supervising foremen at Susquehanna, Pa., and indicate their roster standing in accord with the existing custom at that time. This is the oldest roster now available, all previous ones having been lost or destroyed, but we are assured by employes who are familiar with the compiling of rosters for a long period that this standing existed on a number of rosters that were issued prior to that date.

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.

Machinists C. B. Miller and C. O. Agler were promoted to positions as foremen and transferred from the points at which they held seniority as machinists.

The schedule of rules is specific in granting foremen seniority rights only at their home point if for any reason they are demoted or returned to the rank of mechanics.

AWARD

Machinists C. B. Miller and C. O. Agler, demoted foremen, shall return to their home point in accordance with the provisions of Rule 14, paragraph (b), and Rule 16, paragraph (c), of the current Federated Shop Crafts agreement on Erie Railroad.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 28th day of May, 1936.