

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 Machinist L. Ludwig should or should not lose his seniority as a machinist and have his name removed from the roster at Dunmore Car shops, in accordance with Rule 24, paragraph (a), of the Shop Crafts' Agreement, on account of having accepted employment with another corporation while on leave of absence.

POSITION OF EMPLOYEES.—This case is a violation of Rule 24, paragraph (a), of the Shop Crafts' Agreement, which provides for the granting of leaves of absence to employes affected by the said agreement, but it very plainly states that if an employe absent on leave engages in outside employment, he shall lose his seniority, which is what occurred in this case, Mr. Ludwig having accepted employment with the American Oil Company, at their Scranton branch plant while on leave of absence in November, October, and September, 1932. Mr. Ludwig admitted this to be true at hearing held in Mr. Bell's office, Supt. of Shops, in the presence of Mr. C. Swartwood, General Foreman, and Local Chairman, Mr. E. J. McLaughlin, on February 6, 1935. In the early part of September, 1932, Mr. J. Ortner, who was then shop supt., called in the local chairman of the committee and told him that Mr. Ludwig wanted leave of absence. He agreed to this, telling Mr. Ortner that if Ludwig worked anywhere while on leave of absence it was contrary to the agreement, and that Mr. Ludwig would lose his seniority if he accepted any other employment. The local chairman again agreed to a leave of absence for the month of October, but when called in the office in the early part of November, he refused to agree to any more renewals, as he had found out that Mr. Ludwig was working for the American Oil Company, but apparently Mr. Ortner granted Mr. Ludwig a leave of absence or permission in some way, as Mr. Ludwig continued to work for the American Oil Company until December 1st of that year.

POSITION OF CARRIER.—The carrier denies the claim of the employes that Machinist L. Ludwig, while on leave of absence, accepted outside employment, thereby forfeiting his seniority as provided in Rule 24. Mr. Ludwig was not on a leave of absence as intended under the application of this rule. He was furloughed on June 1, 1932, at which time the shop closed for an indefinite period. When it was determined that the shop would re-open for seven days in the month of September, 1932, instead of recalling Machinist Ludwig for service, he was permitted to remain on furlough by mutual agreement. There was no extended leave of absence, but by these mutual agreements the leaves of absence were granted and intended to extend Ludwig's furlough.

The first agreement covering extension of furlough for the month of September was signed by the shop superintendent and the chairman of the machinists; the second extension for the month of October was signed by the same parties.

It is not a custom under Rule 24 to prepare a mutual agreement when such leaves of absence are granted, but owing to the unusual condition which existed at Dunmore Shop during the period mentioned, the agreement was entered into by both parties. The machinists' chairman now contends that he did not understand he was signing an agreement to allow Machinist Ludwig to accept outside employment.

Several car department employes were granted leaves of absence during the same period and under the same conditions.

The practice of extending furloughs in this manner is not unusual. It has been followed at a number of points on this railroad and has been applied to various classes of employes.

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.

(a) Rule 24 of the current agreement prohibits employes from accepting "outside employment" while on leave of absence on penalty of losing their seniority.

(b) It is established by the record, however, that both the carrier and representatives of the employes, in an effort to meet conditions growing out of the depression, have made many temporary arrangements which in effect waived the provisions of Rule 24, and the course followed in the instant case appears to be in keeping with that practice.

AWARD

In view of the circumstances outlined in paragraph (b) of the findings, this claim cannot be sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 29th day of May, 1936.