

NATIONAL RAILROAD ADJUSTMENT BOARD
Second Division

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (SHEET METAL WORKERS)
ILLINOIS CENTRAL SYSTEM**

DISPUTE: CLAIM OF EMPLOYEES.—That Earl Melton be paid for all time lost as a result of being taken out of service at Louisville, Kentucky, in violation of Rule 40.

EMPLOYEES' STATEMENT OF FACTS.—Earl Melton was employed as a pipefitter at Louisville, Ky., filling vacancy due to illness of Pipefitter Schoen, and on June 8, 1935, was given three days' notice that he could return to Paducah. Mr. Melton believed that he had been laid off because Mr. Schoen was returning to service; later he, Melton, discovered that Schoen had not returned to work but that the company had sent another man, Mr. Joe Mitchell, from Paducah, to fill the job at Louisville. Pipefitter Mitchell is junior to Earl Melton on the seniority roster at Paducah, Ky.

POSITION OF EMPLOYEES.—This case has been handled in accordance with the established practice of handling grievance cases on the Illinois Central System and in view of the fact that we have been unable to adjust same, nor have we been successful in having the representative of the carrier join with us in submitting a joint statement of facts in this case, as shown by Exhibits G and H, we are compelled to submit this case ex parte. We contend that Earl Melton entered the service of the Illinois Central Railroad at Paducah, Ky., on May 15, 1917. After various promotions, he was promoted to pipefitter on June 16, 1921, which date is his correct seniority date as a pipefitter. Mr. Melton was furloughed on June 21, 1921, and was called back in September or October of 1921. This procedure was repeated several times but in each instance he was called back in the order of his seniority. He also worked in the roundhouse at Paducah and on June 24, 1933, went to work in the new shops at Paducah. He was furloughed in May, 1935, and on May 16, 1935, was called to Louisville, Ky., to fill the position of Pipefitter F. H. Schoen who was off duty due to illness. On June 8, 1935, Mr. Melton was given a three days' notice and was furloughed, and as Louisville is a one-man point so far as pipefitters are concerned, he (Melton) was under the impression that Pipefitter Schoen was returning to service as nothing was said by management regarding Melton's inability to perform his work in a satisfactory manner. Three days after Melton's return to his home in Paducah, he learned that Pipefitter Schoen had not returned to work; that the company had employed Pipefitter Joe Mitchell, who was also furloughed at Paducah, to fill the job he (Melton) had been furloughed from at Louisville. As Pipefitter Mitchell is junior in service to Pipefitter Melton (seniority dates February 5, 1930, and June 16, 1921, respectively), Melton immediately took the matter up with the general foreman at Louisville and inquired as to why a man junior to him had been employed. The general foreman replied, "you are a good mechanic, and did your work well, but do not do enough." (See Exhibit A.) This, we contend, is a violation of Rule 40, which reads:

"An employe entering the service, and remaining therein thirty (30) days, will thereby establish his competency."

as Melton had been in the employ of the Illinois Central Railroad since May 15, 1917, or 17 years, and any incompetency on Melton's part should have been detected long before this time. The above quoted rule is interpreted to mean entering the service of the railroad, not entering the service at a particular point.

May 16, 1935, to fill Pipefitter Schoen's position in the roundhouse during the latter's absence through the application of Rule 30 of the schedule agreement, reading:

"When reducing forces, if men are needed at other points, they will be given preference to transfer, with privilege of returning to home station when force is increased, such transfer to be made without expense to the company, seniority to govern."

Melton was taken off the postion at Louisville on June 8, 1935, because his services were not acceptable to the employing officer at that point.

POSITION OF CARRIER.—The facts in connection with this claim are as set up in the carrier's statement. It will be noted that Melton was employed as a pipefitter in the roundhouse at Paducah, Ky., for a period of twelve years. The roundhouse work at that point was of such volume that we were able to use him on specialized work, and his services as a pipefitter under such conditions as prevailed at Paducah were acceptable to the carrier. He was transferred to the back shop at Paducah on June 24, 1933, and continued in service there until laid off account force reduction on September 22, 1934, and his services in the back shop were acceptable to the carrier. He was permitted to go to Louisville as a pipefitter in the roundhouse during the absence of the regular pipefitter, Schoen, under the provisions of Rule 30 of the schedule agreement, which rule is quoted in the carrier's statement of facts.

Melton's services commencing May 16, 1935, on running repair work in the roundhouse at Louisville were not satisfactory to his employing officers, and he was relieved on June 8, 1935. We have only a small force at Louisville, and the pipefitter there must be fully qualified and competent to properly line up and perform work in all branches of his trade. It will be noted Melton was developed from a handyman and not an apprentice, and it was found that he could not keep up the pipefitter's work at Louisville. When he was relieved on June 8, 1935, he was told by the general foreman that he would not be called back to work at Louisville, and the reason he would not be recalled. See statements from the general foreman as carrier's Exhibits A and B; also carrier's Exhibits C, D, E, F, G, and H are statements of the car foreman, four machinists, and a boiler inspector, respectively, showing their observations of Melton while he was employed as a pipefitter at Louisville. These statements are submitted in support of the statements of the general foreman, carrier's Exhibits A and B.

The regular pipefitter, Mr. Schoen, was not able to return to service when Melton was relieved, and other pipefitters were permitted to work at Louisville through the application of Rule 30 of the schedule agreement, as shown in the carrier's "Statement of Facts." Mitchell resigned on November 5, 1935; White resigned on January 25, 1936; and Clark returned to Paducah on February 23, 1936, on account of the regular pipefitter (Schoen) returning to service.

In our handling of this case with the employes' representatives they have taken the position that we violated Rule 40 of the schedule agreement in relieving Melton at Louisville. The rule reads:

"An employe entering the service, and remaining therein thirty (30) days, will thereby establish his competency."

While it is true that Melton was employed as a pipefitter at Paducah for several years, Rule 40 refers to an employe *entering the service*, and is not applicable in a case of this kind. Furthermore, it is our contention that even though an employe does establish competency on a position, he may later become incompetent for some reason, and therefore nothing in the schedule agreement, or elsewhere, requiring the carrier to continue an employe in service after he has proven himself incompetent.

Briefly stated, Pipefitter Melton was laid off at Paducah on September 22, 1934, and was permitted to go to Louisville to work as a pipefitter on May 16, 1935, through the application of Rule 30 of the schedule agreement. His services on running repairs in the roundhouse at Louisville were unsatisfactory, because he was unable to properly line up and perform the work; he was so advised, and relieved by the general foreman on June 8, 1935. Carrier's Exhibits A to H, inclusive, show beyond any question of doubt that Mr. Melton was not qualified and competent to render the service required, and in view

of the evidence, we feel argument on part of the carrier is not necessary to convince the Board of that fact. Had he been able to do the work in a satisfactory manner, he would have been permitted to perform service at Louisville on such days as the services of a pipefitter were required until the regular pipefitter (Schoen) returned to work. We respectfully ask that the claim be denied.

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.

Earl Melton was laid off allegedly for cause and not given a hearing as provided in Rule 39 of the Agreement, which reads as follows:

“No employe shall be disciplined without a fair hearing by a designated officer of the carrier. Suspension in proper cases pending a hearing, which shall be prompt, shall not be deemed a violation of this rule. At a reasonable time prior to the hearing, such employe will be apprised of the precise charge against him. The employe shall have reasonable opportunity to secure the presence of necessary witnesses and shall have the right to be there represented by the authorized committee. If it is found that an employe has been unjustly suspended or dismissed from the service, such employe shall be reinstated with his seniority rights unimpaired, and compensated for the wage loss, if any, resulting from such suspension or dismissal.”

AWARD

Earl Melton shall be paid for time lost from June 8, 1935, until returned to service at Paducah, Kentucky.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: J. L. MINDLING
Secretary

Dated at Chicago, Illinois, this 8th day of July, 1936.

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 69
DOCKET NO. 79**

NAME OF ORGANIZATION: Railway Employees' Department, A. F. of L.
(Sheet Metal Workers)

NAME OF CARRIER: Illinois Central System

Upon application of the representative of the employees involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The award provides that:

"Earl Melton shall be paid for time lost from June 8, 1935, until returned to service at Paducah, Kentucky."

While the specified amount due Mr. Melton could not be stated in the award, it should, however, be understood that he is entitled to all time lost during the period designated in the award, while mechanics junior to him in seniority were employed at Louisville, Kentucky, roundhouse, or until he was restored to his regular position at Paducah, Kentucky, shops, in accordance with his seniority, less amount he earned during that period, which amount should be determined by a check made jointly by the representatives of both parties.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 21st day of June, 1937.

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