

Award No. 140

Docket No. 136

2-IC-CM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ILLINOIS CENTRAL SYSTEM

DISPUTE: CLAIM OF EMPLOYES: That A. D. Wilson should be shown on the painters' seniority rosters at Clinton, Illinois, as a freight car painter as of June, 1927, and a locomotive painter as of October 30, 1933, and be compensated for all lost time while junior men were employed.

EMPLOYES' STATEMENT OF FACTS: Mr. Andrew Sack was employed as a locomotive painter at Clinton, Illinois, November 12, 1935, and worked as such until he was furloughed on February 5, 1936, and is now carried on the painters' seniority roster at Clinton as a locomotive painter.

POSITION OF EMPLOYES: This case has been handled in accordance with the established practice of handling grievance cases on the Illinois Central System and we contend that Rules 28 and 32 of the agreement between the Illinois Central System and System Federation No. 99 have been violated by the carrier at Clinton, Illinois.

It has been the established practice at Clinton, Illinois, for the carrier to maintain one locomotive painter in the roundhouse who was regularly assigned to the painting of engines and whenever business required any additional painters at the roundhouse, a painter from the car department was assigned and we are showing below the dates Mr. Wilson worked in the various departments as a painter at Clinton, Illinois.

Painter in car department	June 1927 to Dec.	4, 1927
Painter in roundhouse	Oct. 30 to Dec.	9, 1933
Painter in car department	Feb. 4 to March	1, 1935
Painter in car department	June 1 to June	4, 1935
Painter in roundhouse	June 5 to June	6, 1935
Painter in car department	Sept. 30 to Oct.	7, 1935

On November 12, 1935, a Mr. Andrew Sack was employed as a locomotive painter at Clinton, Illinois, while Mr. Wilson, who we contend has established seniority both in the roundhouse as a locomotive painter and as a painter in the car department, was furloughed, which we contend to be in violation of Rules 28 and 32 of the existing agreement.

Rule 28 reads in part:

"* * * In the restoration of forces, senior laid off men will be given preference in returning to service, if available within a reasonable time, and shall be returned to their former position if possible,

nished the committee. Unless a written protest is made by men in active service within thirty (30) days from date of posting seniority list, dates shown thereon will not thereafter be changed."

A complete record of Wilson's service with the company is quoted above, and shows conclusively that his correct date of seniority as a painter is October 30, 1933. The last seniority list issued prior to April 1, 1935 (the effective date of the current schedule) is dated January 1, 1935, and Wilson's name did not appear on it. The first seniority list subsequent to April 1, 1935, is dated January 1, 1936, and it shows Wilson's seniority date as October 30, 1933.

The question of Wilson's seniority rights was first handled with the carrier by the local carmen's committee on November 14, 1935, the committee's request reading as follows:

"Referring to case of Dean Wilson, a Painter. He wishes to establish rights as an Engine Painter as there is another painter from another Division. He says he has painted engines so we the Committee wish him to be given a trial as he holds seniority here as a Painter. Trusting you will advise us of your decision in writing and oblige."

When the seniority roster of January, 1936, was compiled, Wilson was shown thereon as a car painter with the seniority date of October 30, 1933. The request that he be given seniority as a freight car painter from June, 1927, is not justified by his service record and Rule 32 of the schedule quoted above.

The facts and circumstances in this case do not justify the claim, and we respectfully ask that it 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.

Subsequent to the oral hearing, the Division received proper notice from the parties that they had reached an agreement on all phases of this dispute, with the exception of proper seniority date for A. D. Wilson, and ask the Division to pass on that question only.

Due to the loose manner in which the seniority lists were compiled and maintained, the fact that Wilson was not notified of his dismissal for refusing the call, and no investigation held to determine the facts, the Division finds that there is merit in the claim of Mr. Wilson for his prior seniority date.

AWARD

A. D. Wilson's seniority rights shall be restored as of June 2, 1927.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 10th day of February, 1937.