

Award No. 269

Docket No. 252

2-IC-CM-'38

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee John A. Lapp when award was rendered.

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Carmen Wells, Cothorn, Felder and Smith be compensated at the carmen's rate of pay for all time lost due to being unjustly furloughed, and that all carmen, including the junior men who are retained in the service, be paid the difference between seventy-three (73¢) cents per hour and seventy-one (71¢) cents per hour for all time worked at the lower hourly rate.

POSITION OF EMPLOYES:

Proposed Joint Statement of Facts:

On March 29, 1937, the above named carmen were furloughed in force reduction and junior carmen were retained in the service at McComb, Mississippi.

Position of Employees:

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, 32, 149 and 150 of the agreement between System Federation No. 99 and the Illinois Central System, and this Board's Award No. 139 and its interpretation have been violated by the carrier at McComb, Mississippi.

In order that the members of this Board may have a clear picture of what has actually taken place in this dispute since the issuance of this Board's Award No. 139, and its interpretation, we are quoting below two bulletins posted in the car department at McComb, Mississippi, under dates of March 23 and March 24, 1937.

"McComb, Miss., March 23, 1937

BULLETIN

Have position for six (6) truck repair men, hours from 7:00 A. M. to 12:00 Noon, 1:00 P. M. to 4:00 P. M. Rated 71¢ per hour.

Position will be awarded to senior man making application within five days from date to Mr. A McEwen, Ass't. Gen'l Car Foreman.

S/ R. M. McEwen

cy Cleon White

In the present case the program started in January, 1937, reached a point on March 29, 1937, when it was desired to reduce the force four men and retain men on truck work. Ten junior men were furloughed and bulletin posted for men to be retained, per carrier's Exhibits C and D. Only five men bid for and were placed on these truck jobs; an apprentice was assigned to the sixth.

Messrs. Moak, White, Travis, Barron and McCullough filed application for positions advertised. Messrs. Smith, Felder, Cothorn, Wells and Lederer did not, and were furloughed. Messrs. Smith, Felder and Cothorn could have remained in service if they had so elected because they were senior to Messrs. Travis, Barron and McCullough. Mr. Wells' name has no place in the claim, because five men are senior to him.

The carrier has information that Mr. O'Brien, former general chairman of the Brotherhood Railway Carmen of America, advised carmen at McComb not to bid for the truck jobs advertised, because the rate of pay was 71 cents per hour. The carrier contends the general chairman erred in prompting employees in this manner, and he is solely responsible to each man for the time lost. Fallacious advice of this nature can be construed as a violation of that part of Rule 38, reading: "* * * while questions of grievances are pending, there will neither be a shut down by the employer nor suspension of work by the employees."

The seniority principle of the rules requires that the carrier afford senior employees an opportunity to the work available, but it also devolves upon the employees to avail themselves of this opportunity under the same rules. The employee cannot be required against his will to make application for the position advertised; and, if none is made, it is properly taken as an indication that the employee does not care for the position. The fact that an employee prejudiced his right to work by taking advice of the duly authorized general committee, or their representative, is no fault of the carrier.

The carrier has shown:

1. That truck repair jobs were established by bulletin when the program was started.
2. That employees performing truck work only are paid a minimum of 71 cents per hour.
3. There was a mutual understanding between the parties as to how reductions in force would be accomplished.
4. That the reduction in force was effected in the manner requested by the employees' representatives.
5. There has been no violation of any rule in the current agreement.

Therefore, the claim is without merit and should be denied.

OPINION OF THE DIVISION: The contentions in this case are that the rate of pay was reduced from seventy-three cents to seventy-one cents per hour, contrary to the rules, and that the complainants were unjustly furloughed.

The employees contend that the rate of pay should be seventy-three cents an hour instead of seventy-one cents. The basis of the contention is that the agreement provides that there is to be no reduction in hourly rates of pay for classifications or for individuals, the intention being to retain classifications and individuals receiving a higher rate, at such higher rate. The employees maintain that men who had been getting seventy-three cents an hour were compelled to take seventy-one cents an hour, contrary to Rules 149 and 150 of the agreement.