

Award No. 341

Docket No. 371

2-NYC-MA-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 103, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That A. N. Kohler's seniority date should be 6-1-25 in place of 5-24-22.

JOINT STATEMENT OF FACTS: Due to all oxyacetylene operators being on the boilermakers' seniority roster at the Avis, Pa., shops, on or about June 1, 1925, several of these employees were transferred from the boilermakers' roster to other craft seniority rosters, among them A. N. Kohler to the machinists' and H. Reading to the sheet metal workers' rosters.

On or about February 1, 1927, a controversy arose among the operators, and an understanding was entered into between Messrs. F. A. Linderman, district superintendent of motive power, and G. G. Shuman, chairman, Avis Local Federation, relative to the status of these employees; Mr. Shuman's letter of February 23, 1927 (Exhibit 3), and confirmation of same, Mr. Linderman's letter of July 31, 1937, (Exhibit 7); Kohler and Reading being retained on the boilermakers' seniority roster as per Mr. Shuman's letter.

On February 26, 1931, preceding consolidation of the Avis shop force with West Albany, N. Y., shop force, a memorandum of agreement was entered into between Messrs. Bowen, Bannister, Rieber, Fitzsimmons and McCullough, representing System Federation No. 103, and F. A. Linderman, district superintendent of motive power, wherein P. Giminiani and A. N. Kohler were involved (Exhibit 1).

Upon consummation of the Avis—West Albany consolidation, seniority rosters were posted at West Albany and opportunity given to enter protest against any considered irregularities. Protest was entered against Kohler's seniority date of 5-24-22 by the machinists' committee of Lodge No. 1145 (Exhibit 8).

POSITION OF EMPLOYEES: That Mr. A. N. Kohler is only entitled to machinist's seniority of June 1, 1925. That the memorandum of understanding entered into between Messrs. Bowen, Rieber, Bannister, McCullough and Fitzsimmons, with F. A. Linderman, district superintendent of motive power, on February 26, 1931 (Exhibit 1), is null and void, in the case of A. N. Kohler, due to the fact that the understanding of 1925 (Exhibit 2), was not noted on Mr. Kohler's service card record, which it should have been with the later confirmation of the understanding contained in Mr. G. G. Shuman's letter of February 23, 1927, to Mr. Linderman (Exhibit 3), wherein Messrs.

May 24, 1922, his old or original seniority dating as mechanic, the carrier is unable to see how those terms could logically be interpreted as establishing the date of June 1, 1925.

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 waived right of appearance at hearing thereon.

When dividing up the welding work in 1927, Kohler was performing machinists' work and was retained thereon pending an opportunity to return to the boilermakers' craft work.

Kohler either failed or neglected to avail himself of the right to return to boilermakers' work, and it is evident that the committee failed to carry out the arrangement.

In 1931, by agreement with the general and local committees, Kohler was transferred to the machinists' seniority list with his old seniority.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 2nd day of June, 1939.