

Award No. 449

Docket No. 456

2-IC-CM-'40

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Mr. Charles Zimmerli, carman, be restored to service at Springfield, Illinois, with seniority rights unimpaired and that he be compensated for all time lost.

EMPLOYEES' STATEMENT OF FACTS: Mr. Charles Zimmerli was employed as a carman at Springfield, Illinois, November 1, 1922, and had worked as such until April 18, 1932, when he was laid off in a reduction of force. At no time subsequent to April 18, 1932, was Mr. Zimmerli notified or required to report for work at Springfield, Illinois.

POSITION OF EMPLOYEES: It will be noted from the employees' statement of facts in this case that Carman Zimmerli held seniority as a carman at Springfield, Illinois, seniority dating from November 1, 1922, and was laid off in a reduction of force on April 18, 1932, in line with the provisions of the agreement then in effect, and at no time subsequent to April 18, 1932, has the carrier or its representatives notified or requested Mr. Zimmerli to report for work at Springfield, Illinois.

At the time Mr. Zimmerli was laid off at Springfield, Illinois, he was given work as a car inspector at Divernon, Illinois, in line with the provisions of Rule No. 21 of the agreement then in effect, which reads as follows:

"When reducing forces at any particular point, if men are needed at another point they will be given opportunity to transfer if qualified to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Company."

The above quoted rule was interpreted by the then General Superintendent of Motive Power R. W. Bell, who, in his letter addressed to shop superintendent and master mechanics under date of April 2, 1929, stated as follows:

"Rule 21 applies in the case where an employe is laid off and secures employment at another point on the System. Such employe will be subject to recall at the point where he was laid off until such time as he notifies the Master Mechanic in charge at his home point that he does not care to return, however, he began as a new man at the point where he secured employment and his seniority at the new point would begin on date of transfer."

between what he would have earned and what he did earn during the period of time awarded, less any amount involved due to the organization's lax handling of this case.

The summarized conclusion is that claim is not valid because:

First: Case was not "pending and unadjusted" under the Railway Labor Act as amended June 21, 1934.

Second: Of mutual disposition agreed to in May and June, 1935.

Third: No protest was made account Mr. Zimmerli's name being omitted from the Springfield seniority list and placed on the Divernon list within thirty days after posting of the January 1, 1936 seniority list, as provided in Rule 32, reading:

" * * * The seniority lists based on actual service record, will be posted in January of each year and will be open to inspection and copy furnished 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."

(Emphasis by the carrier)

Fourth: Case was not brought to the attention of the carrier within the time limit established in Rule 37, reading in part:

"Should any employe subject to this agreement believe that he has been unjustly dealt with, or any of the provisions of this agreement have been violated, the case shall be taken to the Foreman, General Foreman, Master Mechanic or Shop Superintendent, each in their respective order, by the duly authorized local committee or their representative, within ten (10) days. * * *"

The carrier contends this case should be declined without qualification.

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.

Charles Zimmerli, holding rights at Springfield, during a reduction in force accepted employment at Divernon; the record is generally confused as to the time when Zimmerli could or should have returned to Springfield.

The management has indicated that under certain conditions they have no objection to Charles Zimmerli retaining his seniority rights at Springfield.

Under the circumstances surrounding this case, Zimmerli should be restored his seniority rights at Springfield.

AWARD

Charles Zimmerli shall have his seniority rights at Springfield restored. Compensation for time lost denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of April, 1940.