Award No. 491
Docket No. 480
2-CI&L-CM-'40

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

SYSTEM FEDERATION NO. 32, RAILWAY EMPLOYES' DEPARTMENT, A. F. OF L. (CARMEN)

CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That John A. Cooper be restored to service at Mitchell, Indiana, and paid for all time lost at rate of 78¢ per hour, eight (8) hours per day and six (6) days per week, from April 14, 1939, until restored to service on account of being furloughed April 14, 1939, in violation of Rules 30, 26 and paragraph B of miscellaneous rule, page 24, of current agreement, also violation Section VI of the Railway Labor Act, the violation being assignment of carmen from other seniority points to do the work formerly performed by Cooper.

EMPLOYES' STATEMENT OF FACTS: John A. Cooper was employed as a carman at Mitchell, Indiana, October 1, 1930, and continued in that capacity until April 15, 1939; his duties consisted of inspection of cars in interchange, making necessary repairs to cars at his point and doing any other work considered carmen's work. During the above mentioned period there were two carmen employed at Mitchell, Indiana, Cooper being the junior carman in point of seniority at that point. Mitchell, Indiana, has been a seniority point for two or more carmen for many years.

Under date of April 8, 1939, Cooper received a notice from the system master mechanic advising that at the expiration of five days or at the close of his work day on April 14, 1939, that he would be laid off indefinitely in reduction of forces. (See Exhibit A).

POSITION OF EMPLOYES: We contend that inasmuch as one carman was retained in service at Mitchell, Indiana, after April 14, 1939, that the action of the master mechanic in laying Cooper off would not have been a violation of our agreement if the one remaining carman could have, or would have done, the carman's work at that point after Cooper was laid off, or if and when it again became necessary to have more than one carman to perform that work, Cooper would have been restored to service in accordance with the provisions of our federated agreement. However, that was not done; instead when it again became necessary to use more than one carman at Mitchell, other carmen from Bedford, Indiana, another seniority point ten miles north of Mitchell, were sent to Mitchell to do the work formerly done by Cooper.

Therefore, the management has violated our agreement Rules 30, 26, paragraph B of miscellaneous rule, on page 24, of current agreement and Section 6 of the Railway Labor Act, by arbitrarily changing our rules without giving any notice as is required by the agreement and the law.

3. Position was discontinued in accordance with the terms of the agreement, and in the same manner as in prior years.

4. The present method of performing the work does not constitute a violation of the agreement.

5. An award should be rendered in favor of the carrier.

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.

Car Inspector John A. Cooper was properly furloughed, but his furlough did not destroy his seniority rights. When the work requirements of a seniority point or assignment have decreased to the extent that the services of even one employe are not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change.

The Division is of the opinion that each of the parties should respect the rights of the other and that an equitable disposition can be made by the representatives of the parties. The Division remands this question to the parties directing that they make an earnest effort to effect an equitable adjustment of the dispute.

AWARD

Claim remanded without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 31st day of July, 1940.