

Award No. 498

Docket No. 488

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)**

THE CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY

DISPUTE: CLAIM OF EMPLOYES: That George Shildmyer be restored to service at Greencastle, 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 of Section VI of the Railway Labor Act, the violation being assignment of carmen from other seniority points to do the work formerly performed by Shildmyer.

EMPLOYEES' STATEMENT OF FACTS: George Shildmyer was employed as a carman at Greencastle during the year of 1913, and continued in that capacity until April 15, 1939; his duties consisted of inspecting cars in interchange, making necessary repairs to cars at his point and at various times he was required to make necessary repairs to cars set out for hot boxes or other defects at other stations north as far as Roachdale, Indiana, a distance of approximately fifteen and one half miles. However, Greencastle was his seniority point; this place has been a seniority point for carmen who have been employed there for a period of fifty years or more.

Under date of April 8, 1939, Shildmyer received a notice from the system master mechanic that at the expiration of five days or at the close of work day April 14, 1939, he would be laid off indefinitely in reduction of forces; also for him to leave all keys to buildings with agent at that point. See Exhibit A.

POSITION OF EMPLOYEES: We contend in this case that the seniority rules of our federated agreement have been violated inasmuch as the master mechanic issued a letter of instructions on the same date as he issued the notice of reduction in forces, that a carman from another seniority point would be assigned to do such work as was necessary to be done at Greencastle by the carmen. See Exhibit B.

Rule 30 of our federated agreement only provides for point seniority for carmen and reads as follows:

"Rule 30. Seniority of employees in each craft covered by this agreement shall be confined to the point employed in each of the following departments:

Maintenance of Way (bridge and building where separate from
Maintenance of Way Department.)

Since the volume of work at Greencastle has diminished to an average of thirteen (13) minutes per work day (see Exhibit 7 and paragraph 8 of carrier's statement of facts), the position in fact ceased to exist and the management's notice to Mr. Shildmyer of April 8, 1939, was merely an official recognition of that fact, and by the official abolition of the position, Greencastle in reality ceased to constitute a seniority point.

The carrier submits:

1. There has been no violation of Rules 26, 30 or paragraph B of Miscellaneous Rule, page 24, of current agreement.
2. There has been no violation of Section 6 of the Railway Labor Act.
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 George Shildmyer 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.