

Award No. 509

Docket No. 541

2-NYC-MA-'40

**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: Claim of T. J. Geiser, machinist, whether his seniority was properly forfeited on October 9, 1931, and his subsequent dismissal in December, 1936, was rightful.

JOINT STATEMENT OF FACTS: T. J. Geiser was first employed by the New York Central as machinist at Elkhart locomotive shop on February 13, 1909. He continued in service at Elkhart until November 1, 1930, when, along with other employes at Elkhart, he was transferred to Collinwood locomotive shop in the consolidation of forces of the two shops which took place at that time.

On August 3, 1931, while employed at the Collinwood locomotive shop, Mr. Geiser requested leave of absence, giving as the reason therefor, acute generalized arthritis. (Copy of his request for such leave of absence submitted, marked Exhibit No. 1.)

Leave of absence was granted, but objections were subsequently taken thereto by the machinists' committee at Collinwood locomotive shop. (Copy of letter submitted, marked Exhibit No. 2.)

Mr. Geiser was notified on October 9, 1931, of the carrier's intention to remove him from the seniority roster at Collinwood locomotive shop because of the infraction of Rule 21. (Copy of the carrier's letter to Mr. Geiser, together with copy of statement of the machinists' committee concurring in the action taken, submitted, marked Exhibits Nos. 3 and 4, respectively.)

Rule 21, which governs the conditions under which leaves of absence will be granted, reads as follows:

"When the requirements of the service will permit, an employe will be granted leave of absence under reasonable circumstances, but must make written application in duplicate to the official in charge, who will forward one copy to the Local Committee.

If renewal is desired, written application in accordance with the foregoing requirements will be made prior to the expiration of the leave of absence previously granted.

An employe, while on leave of absence, who engages in other work, will forfeit his seniority unless special arrangements have been made with the proper officials and the Local Committee."

When the force at Collinwood locomotive shop was increased during the fall of 1936, Mr. Geiser was among approximately 250 other men put to work. He was re-employed September 23, 1936, as a new employe, his application for employment indicating that he had previously been discharged account of not complying with Rule 21. (Copy of application, marked Exhibit No. 5, submitted.) When the application was checked some time later and it was observed that he was born in 1880, and therefore eleven (11) years older than the carrier's hiring age limit of 45 years for new employes, he was removed from service and advised of the reason therefor.

POSITION OF EMPLOYES: That Mr. Geiser did not violate the rule involved, Rule No. 21, and particularly paragraph 3 which is quoted in the Joint Statement of Facts.

Copies of letters supporting the contention are submitted marked Exhibits A to H, inclusive.

After Mr. Geiser took a leave of absence in 1931 the local committee of the machinists' craft received information that Mr. Geiser was operating a fruit and vegetable market in East Elkhart. The committee accepted this information as being correct, and considered that in opening up this fruit and vegetable market Mr. Geiser had violated the third paragraph of Rule 21. On September 28, 1931, this local committee notified the superintendent of Collinwood locomotive shop that Mr. Geiser had violated this rule, and requested that Geiser's name be removed from the seniority roster of the Collinwood locomotive shop. On October 9, 1931, the shop superintendent notified Mr. Geiser in writing that he was being removed from the service and from the seniority list at Collinwood as of that date on account of not meeting the requirements of Rule 21.

Mr. Geiser exchanged correspondence with Messrs. Starbuck, executive vice president, and Schaff, vice president and general manager, and during November Mr. Geiser met Messrs. Starbuck and MacBain, former general manager, at Elkhart, with whom he discussed his case, Mr. Starbuck referring the matter to Mr. MacBain. Later on, due to the retirement of Mr. MacBain, the matter was handled personally and by correspondence by Mr. Geiser with Mr. Schaff. Copies of Exhibits A to G, inclusive.

Based on information subsequently received, it is now the position of the machinists' general committee that there was a doubt with regard to Mr. Geiser's ownership and operation of the fruit and vegetable market. In view of this doubt, the machinists' general committee now feels that the action taken in October, 1931, in removing Mr. Geiser's name from the Collinwood roster was improper and that his name should be restored to the roster with unbroken seniority.

Mr. Geiser was re-employed on September 23, 1936, and worked for a few months, or until some time in December 1936. This service is not involved in the present claim because, if the claim of the machinists is upheld, he will have his full seniority restored.

The committee requests your Board to sustain its claim and restore Mr. Geiser's name to the Collinwood roster with unbroken seniority.

POSITION OF CARRIER: Mr. Geiser was granted leave of absence under the provisions of Rule 21, but no special arrangements were made whereby he would be permitted to engage in other work while on leave. Some time after he had taken his leave it was reported to the carrier that he was engaged in the operation of a fruit and vegetable stand at Elkhart, Ind., and the carrier accordingly notified Mr. Geiser on October 9, 1931, of the charges against him and advised him that in conformity with Rule 21 it would be necessary to remove him from the seniority roster at Collinwood locomotive shop.

Mr. Geiser did not reply to the carrier's letter of October 9, 1931, nor did he in any way attempt to refute or disprove the charges referred to therein, nor did he take up the matter as a grievance under provisions of Rule 35.

Rule 35 provides:

"Should any employe believe he has been unjustly dealt with or the provisions of this agreement have been violated, he shall have the right to take the matter up with his foreman in person or through representatives of his own choice, within seven (7) days. * * *."

That Mr. Geiser was familiar with and understood the provisions of Rule 21 is evidenced by his compliance therewith when requesting the leave of absence. (Exhibit No. 1.) His subsequent disregard of the rule's requirements, and the indifference he displayed when notified by the carrier of its intention to remove him from the seniority roster can only be interpreted to mean that he was satisfied with the action taken. In fact, his entire attitude at the time indicated that he did not care to return to Collinwood, but preferred to obtain a position elsewhere. It is manifest, therefore, that Mr. Geiser's letter, to the superintendent of Collinwood shop under date of December 16, 1936, (Copy submitted, marked carrier's Exhibit No. 1.), in which he states his failure to reply to the carrier's letter of October 9, 1931, was due to lack of understanding and poor advice, cannot be taken seriously in the light of his apparent familiarity with Rule 21 when requesting his leave of absence, and his subsequent indifference to the action the carrier has been compelled to take with respect to his seniority status at Collinwood.

The carrier wishes to emphasize that it has no wish to deprive any of its employes of their seniority, but it has no alternative when infractions of rules requiring such treatment occur. As shown by Exhibit No. 2 the carrier was required to terminate his service because of request from the machinists' committee, in which they charged violation of Article 21. See also Exhibit No. 4.

During the Fall of 1936 it was necessary for the carrier to increase its forces at Collinwood locomotive shop to the extent of approximately 250 men. The number of men required exceeded the number on the furloughed list, and, as is the practice under such conditions, lists of furloughed men at other points were canvassed to secure additional men to answer the requirements. After these lists were exhausted it was still necessary to employ 17 new men, one of whom was Geiser.

The carrier's records indicate that when Mr. Geiser was originally employed at Elkhart on February 13, 1909, he gave Germany as the place of birth, whereas the application he filed when re-employed at Collinwood on September 23, 1936, shows Elkhart as place of birth. The reason for this is not known to the carrier.

It is unfortunate that Mr. Geiser has been deprived of his seniority at Collinwood locomotive shop but the responsibility for this condition rests with Mr. Geiser, and the carrier has merely applied the rules literally, without regard for the effect on individual employes.

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.

On August 3, 1931, while employed at the Collinwood locomotive shop, Machinist T. J. Geiser requested leave of absence which request was granted. Subsequently the machinists' committee reported to management that Mr. Geiser had engaged in other work while on leave and had thereby forfeited his seniority.

Under date of October 9, 1931, the shop superintendent of Collinwood wrote Mr. Geiser notifying him of the exception taken by the machinists' committee who claimed violation of Rule 21.

Machinist Geiser did not reply to the carrier's letter of October 9, 1931, nor did he in any way attempt to refute or disprove the charges referred to therein, nor did he take up the matter as a grievance under the provisions of Rule 35.

Rule 21 definitely states that:

"An employe, while on leave of absence, who engages in other work, will forfeit his seniority unless special arrangements have been made with the proper officials and the Local Committee."

Machinist Geiser not only made no attempt to make any special arrangements "with the proper officials and the Local Committee," but he also failed to reply to the shop superintendent's letter of October 9, 1931, advising him of the machinists committee's action, nor did he comply with the provisions of Rule 35 if at that time he felt that he had been unjustly dealt with, therefore it appears that the responsibility for his present situation rests with Mr. Geiser.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of October, 1940.