

Award No. 659

Docket No. 486

2-CI&L-CM-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

**PARTIES TO DISPUTE:**

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

**CHICAGO, INDIANAPOLIS & LOUISVILLE RAILWAY**

**DISPUTE: CLAIM OF EMPLOYES:** That Charles Payne be restored to service at Frankfort, Indiana, and paid for all time lost at the rate of seventy-eight cents (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 Payne.

\* \* \* \* \*

In Award No. 496, rendered by the Division July 31, 1940, the claim was remanded without prejudice, in conformity with the following findings:

"Car Inspector Charles Payne 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."

Upon failure of the parties to adjust the dispute, the Division resumed consideration of the proceeding. When the case was deadlocked, John P. Devaney was appointed referee, to sit with the Division as a member thereof; and on May 20, 1941, a further hearing was held.

In Award No. 631, rendered by the Division June 26, 1941, the claim was again remanded without prejudice, in conformity with the following findings:

"When the work requirements of a seniority point or assignment have decreased to the extent that the service of even one employe is not required full time, the agreement permits negotiation to protect the interests of the respective parties and prevents any arbitrary change. The disputants have failed to reach an agreement. It is unfair to require the carrier to maintain an employe at a seniority

point when the service demands have no reasonable relation to such maintenance unless the agreement compels it. Likewise, it is unfair to permit the carrier to invade the seniority rights of an employee at a particular point because service demands have decreased. The employee and the carrier can negotiate an agreement covering the specific situation which will consider and recognize the equities and rights of each. For this reason, the dispute is remanded with directions to adjust it and report the agreement reached to this Division within ninety days from this date in lieu of the Division determining the matter as it sees and evaluates the equities."

Upon failure of the parties to reach agreement within the prescribed ninety days, the Division once more resumed consideration of the proceeding. Since the case remained in deadlock, I. L. Sharfman was appointed referee, to sit with the Division as a member thereof, in place of Referee Devaney who had died in the interim; and on November 13, 1941, a further hearing was held.

The following findings and award are designed finally to dispose of the proceeding:

**FINDINGS:** The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Carman Payne was properly furloughed under Rule 26, but this furlough did not destroy his point seniority established by Rule 30. To the extent, therefore, that work at Frankfort and its surrounding territory was subsequently performed by carmen from other seniority points, Rule 30 was violated, as well as that portion of Rule 26 which deals with the restoration of forces. Carman Payne was entitled to this work and should be compensated for it in conformity with the rules of the prevailing agreement. His compensation for time lost should thus include one day's pay of eight hours for each day upon which outside carmen were used at his seniority point, and such additional amounts as he would have earned if he had received five days' notice each time the intermittent service at his seniority point was terminated.

These findings are based, as they must be, upon the relevant rules of the present agreement; and as long as these rules continue in effect Carman Payne, while furloughed, will be entitled to the treatment set forth in these findings. It has been conceded by all concerned, however, that the substitution of district seniority for point seniority would prove of advantage to both parties, and that a tentative agreement in this regard has actually been reached by them. With the disposition, on the basis of the above findings, of the problem of compensation for past violations of the existing rules, the road appears to be clear for the formal adoption of an agreement establishing district seniority, with the elimination, for the future, of the difficulties and harmful effects encountered in this dispute.

#### AWARD

Claim sustained to extent indicated in above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 4th day of December, 1941.