

Award No. 666

Docket No. 641

2-CRI&P-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. 6, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

**THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYES: That Frank G. Ahrens, Albert L. Sewell, C. E. Youman and E. R. Prior, carmen, located at Estherville, Iowa, are each entitled to wages lost as herein claimed account the carrier violated Rule 17, second paragraph and Memorandum Agreement of October 1, 1938.

Frank G. Ahrens, carman.

October: 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31.

November: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29.

December: 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19.

TOTAL: 55 days at \$6.24.

Albert L. Sewell, carman.

October: 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31.

November: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28.

December: 1, 2, 5, 6, 7, 8, 9, 11, 12, 13, 16, 18, 19.

TOTAL: 51 days at \$6.24.

C. E. Youman, carman.

October: 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31.

November: 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 20, 21, 24, 25, 27, 28, 29.

December: 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 18, 19.

TOTAL: 49 days at \$6.24.

E. R. Prior, carman.

October: 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 30, 31.

November: 1, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29.

December: 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15.

TOTAL: 48 days at \$6.24.

an error had been made the senior man was permitted to displace the junior man at such other points and no penalty has been assessed against the management.

It is very evident that if these employees were anxious to secure work at Cedar Rapids that they should have immediately gone to that point to secure work, but it is apparent that they were not anxious to go there at the time they had an opportunity.

Employees are claiming time from October 16, 1939, to and including December 19, 1939. Our records show that Prior worked for the railroad October 13, 1939; Youman on November 29, 1939, and while all of these men are claiming time from October 16 to December 19, 1939, because of not being sent to Cedar Rapids, we wish to call the Board's attention to the fact that during the above mentioned period Frank G. Ahrens received no unemployment insurance benefits; that Albert L. Sewell received only \$10.00; that Curtis E. Youman received benefits of \$10.00 for a waiting period December 12 to 26, and Ernest R. Prior was paid \$42.00 for days of unemployment during the period of October 30, 1939 to December 20, 1939, inclusive, from the Railroad Retirement Board. This is evidence in itself that these carmen evidently were anxious to remain in other employment at Estherville, and did perform work in that vicinity—otherwise, Ahrens would have made request for unemployment insurance benefits, and Sewell, Youman and Prior would have received greater benefits than they did receive if they had been unemployed during the period claimed by the employees.

Mr. Sewell, at least, evidently desired to remain in the vicinity of Estherville in order to take care of some contract obligations which he entered into with the Emmett County Conservation Association, and Carman Frank Ahrens worked for Mr. Sewell between October 18 and November 2, inclusive; also Carman Ahrens worked for a farmer between November 11 and November 21. Mr. Sewell, we understand, received a total of \$2,005.32 for bins which he erected for the above association during the months of September, October and November, 1939.

As indicated above, the claimants knew there was work for them at Cedar Rapids, and it was up to them to go to that point if they desired employment. The foreman did not cancel his instructions to the men. General Chairman Arrington agreed, on December 19 and 21, 1939, that the management handled these men in the proper manner. No claim was filed until January 10, 1940—twenty-one days after the claimants had gone to Cedar Rapids, on December 20, 1939, and, therefore, twenty-one days after cause for complaint had ceased to exist. Claim, therefore, was not filed in accordance with Rule 35 of the agreement of October 1, 1938. The employees do not have division or district seniority.

The general chairmen agreed to the proposed memorandum of October 1, 1938, which was finally adopted, and they did not object to the carrier's definite statement in its letter of September 10, 1938, that no penalty was to be assessed against the carrier in the locating of men under this agreement. The memorandum agreement of October 1, 1938, was entered into merely to provide furloughed employees the opportunity to work at other points where they did not hold seniority, when they were unable to work at their home seniority point.

This agreement of October 1, 1938, does not penalize employees to the extent that they forfeit seniority if they do not accept employment at another point where they do not hold seniority, and, patently, there should be no penalty against 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 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.

The evidence of record supports the conclusion that the men involved were not notified to report for service at Cedar Rapids during the period in controversy; and the failure so to notify them constituted a violation of Rule 17 of the Agreement of October 1, 1935, as elaborated in the Memorandum Agreement of October 1, 1938. It also appears, however, that the dispute was not handled within ten days, as required by Rule 35 of the Agreement of October 1, 1935—that the local committee did not present its grievance until twenty-one days after the cause of complaint had ceased to exist through provision of employment for the men at Cedar Rapids. In these circumstances the time claims cannot properly be sustained.

AWARD

Claim that the agreement was violated—sustained; claim that the carmen are entitled to wages lost—denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

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