

Award No. 1337

Docket No. 1252

2-IC-MA-'49

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION No. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. of L. (Machinists)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1— That the transferring of Machinist Lester Talley from the 8 P. M. to 4:30 A. M. shift, with a lunch period of 30 minutes, seven days per week, to the 7:10 A. M. to 3:40 P. M. shift, with a lunch period of 30 minutes, six days per week, was not proper under the terms of the current agreement.

2—That accordingly, the carrier be ordered to:

- (a) Restore this employe to his former 8 P. M. assignment.
- (b) Compensate this employe in the amount of the difference between the wages earned six days per week and the wages he was entitled to earn at seven days per week, retroactive to May 12, 1948.

EMPLOYES' STATEMENT OF FACTS: As of April 10, 1948, the carrier maintained a seniority force of 44 machinists in its locomotive department, Nonconnah roundhouse, Memphis, Tennessee, and this is substantiated by the submitted copy of seniority roster dated January 1, 1948, identified as Exhibit A.

The carrier posted a notice dated April 10, 1948, designed to effect a reduction in force of 20 machinists after 3:40 P. M. on April 15, 1948, and this is affirmed by the submitted copy of said notice, identified as Exhibit B.

Concurrent with this force reduction notice, Exhibit B, the carrier bulletined certain positions of the machinists named in said bulletin, whose names, classification and seniority dates follow—

Number	Name	Classification	Seniority Date
26	M. P. Pierini	Locomotive	April 29, 1936
28	John R. Haffey	Locomotive	February 11, 1941
29	Lester Talley	Locomotive	February 11, 1941
30	William T. Chism	Locomotive	February 14, 1941
32	William V. Tatum	Locomotive	July 11, 1941
34	W. H. Manuel	Locomotive	September 16, 1941
37	F. W. Gallagher, Jr.	Locomotive	February 1, 1946

Association of Machinists. The carrier insists also that the granting of seniority requested by the employes would be an arbitrary fixing of seniority dates for these workers. The employes answer that if these men were not entitled to seniority, under the general rule, the local committee and the general chairman of one of the federated unions could not change the general rules laid down for all of the crafts. The seniority rule, applicable to all employes, could not, the employes insist, be waived with respect to one of the crafts.

The conclusion to which we are forced to arrive is that the apprentices were not entitled to a seniority status in 1933 above furloughed workers of the Paducah shops and those who wished to transfer to the Paducah shops. They could not properly have been employed at that time and have been given seniority over others having a prior right. Their seniority must have been subordinate to workers previously employed. **The action of the local committee and of General Chairman Bass could not change the rules laid down for all of the crafts in the agreement and disputes arising out of such action could properly come before this Division . . .**" (Emphasis added.)

In this dispute the International Association of Machinists are endeavoring to change the application of a general rule as interpreted by this Board and the practice resulting therefrom that has prevailed for over twelve years. The only way this can be done is by negotiation by the parties pursuant to the provisions of Rule 151 and the Railway Labor Act.

On basis of the circumstances in this particular case, it will be noted that all employes having a seniority date on the machinists' roster subsequent to April 17, 1935, were furloughed, and the positions therein that were retained were simultaneously bulletined. Mr. Tally, having a seniority date of February 11, 1941, could have bid on seven-day positions held by junior employes, Messrs. Tatom, Gallagher or Creamer who were on the same shift, but for some reason he elected not to do so. The opinion of this Board in Award 269 reads in part:

" . . . Complainants Smith, Felder and Cothorn could have remained in the service, if they had bid for the jobs, because they were senior to three of those selected . . . These men did not bid for the jobs, and, consequently, three men of lower seniority were given the positions . . ."

The conditions in the instant case are identical, i. e., Mr. Tally did not take advantage of the opportunity to bid on the jobs that were to be retained, and the carrier assigned men who did bid for the work on the jobs. Mr. Talley also had opportunity to bid in the seven day positions on the same shift vacated by Mr. Rawles and bulletined per carrier's Exhibit D. He (Talley) could have remained in the service if he had bid for any one of these jobs because he was senior to the employes selected, therefore, he has no just or valid claim. Under these circumstances, there has been no violation of the agreement, the furlough being handled in the same manner and in accordance with the agreement on this property since May, 1936, and as approved by this Board in Award 269.

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.

After reviewing the record, previous awards, and, in particular, the applicable rules contained in the current agreement between the parties, we conclude that the claims of Machinist Lester Talley should be sustained.

The language of Rules 28 and 32, we find, does not support either in text or intent the dislocation of this claimant.

AWARD

Claims sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 11th day of August, 1949.