

Award No. 1518

Docket No. 1454

2-A&S-CM-'52

**NATIONAL RAILROAD ADJUSTMENT BOARD  
SECOND DIVISION**

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**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 131, RAILWAY EMPLOYES'  
DEPARTMENT, A. F. of L. (Carmen)**

**ALTON AND SOUTHERN RAILROAD**

**DISPUTE: CLAIM OF EMPLOYES:** 1—That beginning on February 7th, 1951, the Carrier restored to service junior Carmen and thereby damaged senior laid-off Carmen, in violation of the current agreement.

2—That accordingly the Carrier be ordered to:

a) Compensate Carmen Omer Asher, M. J. Kellett, O. E. Leming, H. J. Schneider, and Jess Medley for the second Shift on February 7th from 4:00 P. M. to 12 Midnight, eight (8) hours at their straight time rate of pay.

b) Compensate Carmen R. H. Baltz, A. A. Schlemmer, and R. L. Maisak for the Third Shift from 12 Midnight on February 7th to 8:00 A. M. on February 8th, 1951, eight (8) hours at their straight time rate of pay.

**EMPLOYES' STATEMENT OF FACTS:** Effective at 4:00 P. M. on January 31, 1951, the carrier made the election to furlough all employes of the carmen's craft employed around the clock from 8:00 A. M. to 4:00 P. M.; 4:00 P. M. to 12 Midnight; and 12 Midnight to 8:00 A. M. in the Davis Yard, and from 8 A. M. to 4:00 P. M. on the repair track at East St. Louis, Illinois.

Submitted herewith is copy of the seniority roster identified as Exhibit A, embracing these above affected employes and the carrier made the election to require service therefrom on the second and third shifts commencing on February 7, 1951. The seniority rank and names of these employes on Exhibit A, restored to service on the second shift and the third shift follows:

**"SECOND SHIFT, 4:00 to MIDNIGHT, FEBRUARY 7th**

<b>RANK</b>	<b>NAME</b>	<b>SENIORITY DATE</b>
11.	Edward W. Rehg	July 22, 1941
17.	W. C. Taylor	March 24, 1943
18.	Barney Williams	August 8, 1943
19.	Domenico Coppotelli	September 4, 1943
N.C.S.	George Burrow	Promoted Helper

Here we had a complete lay-off of the entire car department force. Some days later all positions were restored, just as they had been before the lay-off. In these circumstances, the requirement that employes "shall be returned to their former position" is mandatory. If it is not, then it is meaningless.

The mere fact that in this general restoration of forces the second and third shift jobs chanced to open up first did not alter the rule. This circumstance did not divest the second and third shift employes of their right to be "restored to their former position" on the first day on which those positions were restored. This right was absolute. There is no provision in the rule or the agreement to permit any abridgement of this right.

In point of equity, it should be noticed that the number of days lost by all three shifts was the same. The first shift worked on January 31, 1951, while the second and third shifts did not. The second and third shifts worked on February 7, 1951, while the first shift did not.

It is the position of the carrier that the claim of the employes in this dispute is not valid and should be denied.

All data submitted in support of the carrier's position have been presented to the duly authorized representative of the employes and made a part of the particular question in dispute.

**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 and 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.

In view of the fact that the entire Car Department force was suspended in accordance with the provisions of Rule 15(b), and in view of the fact that the number of days lost by the three shifts was the same, there is no merit to the employes' claim.

#### AWARD

Claim denied in accordance with the above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: Harry J. Sassaman  
Executive Secretary

Dated at Chicago, Illinois, this 30th day of January, 1952.