

Award No. 2314
Docket No. 1949-I
2-NYC-I-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Adolph E. Wenke when the award was rendered.

PARTIES TO DISPUTE:

**A. NIELIWOCKI, J. PAWELCZAK, J. COMISKEY, C. DREHS,
AND L. RATAJSKI, MACHINISTS**

THE NEW YORK CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: 1. That the following employees, Machinists, Nieliwocki, Pawelczak, Comiskey, Drehs and Ratajski were discriminated against when the carrier refused to dovetail them on the Collinwood Diesel Shop Roster with their West Albany Shop Roster date the same as other West Albany Shop employees.

2. That the carrier be ordered to dovetail the above named employees on the Collinwood Diesel Shop roster with their West Albany Shop dates.

* * * * *

In Award No. 2026, rendered by the Division December 8, 1955, the claim was remanded in conformity with the following findings:

"The duly accredited representatives of the parties to the controlling agreement have the power to negotiate agreements or memorandums of agreement so long as they apply to the craft and class alike and do not discriminate against any employees covered by same.

The question of whether an injustice occurred to the claimants in the chain of events which led to the situation in which they now find themselves, is highly technical and one, the Division believes, which should be resolved by the parties to the memorandums of agreement here involved. The claim is therefore remanded for a period of ninety days in order that the parties to the agreement may, if possible, satisfactorily resolve the matter in dispute. If, at the end of ninety days, no settlement satisfactory to all concerned is reached, the dispute may again be referred to the Division by the petitioners.

AWARD

Remanded per findings."

Upon failure of the parties to adjust the dispute, the Division resumed consideration of the proceeding. When the case was deadlocked, Judge Adolph E. Wenke was appointed referee to sit with the Division as a member thereof, and on August 2, 1956, hearing was held before the Division with the referee present.

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.

Machinists Adam Neliwocki, John M. Pawelczak, James P. Comiskey, C. W. Drehs and Louis Ratajski claim they were discriminated against because carrier refused to dovetail them on its Collinwood Diesel Shop roster, the same as it had done in the case of other West Albany Shop employes. They request carrier be required to do so, that is, dovetail their West Albany Shop seniority roster date as machinists on the Collinwood Diesel Shop seniority roster for machinists.

As a premise to any discussion of the question herein involved it should be stated that any organization authorized, pursuant to the Railway Labor Act, to represent any class or craft of employes on a railroad is, by the same act, authorized to enter into agreements with the carrier concerning their rates of pay, rules and working conditions. However, such agreements must affect all such employes uniformly except that distinctions or differences can be made if a substantial basis or reason exists for doing so. See Awards 1811, 2025 and 2026 of this Division.

Any dispute which requires a determination of whether or not an agreement complies with the foregoing, or discriminates against any one or more of the class or craft of employes represented, is an interpretation and application thereof within the meaning of the Railway Labor Act and consequently a matter within the authority of National Railroad Adjustment Board. Such disputes may be initiated on the property in the name of individual employes who are affected thereby, as well as by the organization representing them. See Rule 35 of the parties' agreement. The same is true of an appeal here. See Section 3, First (i) and (j) of the Railway Labor Act. The dispute remained unsettled after it had been handled on the property up to the highest officer designated by the carrier to handle such matter when, by letter dated July 12, 1955, he denied it. Appeal by the claimants to this Division was then proper.

Carrier contends Rule 31, which provides for point seniority, has no exception and that any exception thereto can only be made by an agreement between the organization representing the claimants and the carrier. With this we agree. However, such an agreement, when made, must not discriminate against any of the class or craft to which it applies as to their seniority as it then exists. If a distinction or difference is made it can only be sustained if it is based on some substantial ground.

Claimants, who worked at West Albany in the back shop where heavy or classified repairs were made, had seniority on the machinists' roster at that point dating back to September and October of 1922. Carrier, with the advent of Diesels, started utilizing that type of engines, just when is not shown. West Albany was utilized for repairing and overhauling steam locomotives but when Diesels came into the picture the work in connection therewith was performed at Harmon, New York and Collinwood, Ohio; generally the light

or running repairs and specialty work being performed at Harmon and the heavy or classified repairs at Collinwood.

On August 19, 1948 representatives of the organization representing claimants and representatives of the carrier entered into an agreement effective September 1, 1948 consolidating all rosters at Harmon into what is therein referred to as the "Harmon Locomotive Terminal Roster." It was further agreed by the provisions thereof that when, in the judgment of employee and management representatives, forces are reduced at certain points on the carrier, including its West Albany Locomotive Shop, as a direct result of Diesels supplanting steam locomotives that employees affected by such reduction would be privileged to displace at Harmon Locomotive Terminal and have their seniority dovetailed on the roster for that terminal; provided, they did so within thirty (30) days after being furloughed. If furloughed employees, who availed themselves of this privilege, stayed at Harmon for more than thirty (30) days they thereby forfeited their seniority at West Albany. The latter is covered by Section 3 of the agreement.

On September 28, 1951 claimants were furloughed by the carrier, due to dieselization causing the type of work they performed at West Albany to decline. In fact, West Albany Shops were completely closed down in December 1954. Upon being furloughed carrier's superintendent at West Albany advised claimants there was work available for them at Collinwood, Ohio. Pursuant to their rights under Rule 29 of their agreement claimants went to work at Collinwood in October 1951, obtaining seniority there as of the time they started working but, under Rule 29, retaining their seniority at West Albany until thirty (30) days after the date forces were restored at that point. The latter never happened.

An agreement was entered into on February 1, 1952 by representatives of the carrier and the organization representing claimants wherein it was provided that all employees who had been furloughed at West Albany in May of 1951, and since that date and up to and including March 5, 1952, would be considered as having been furloughed due to dieselization and would therefore be given the privilege to displace at Harmon Locomotive Terminal in accordance with Section 3 of the agreement of August 19, 1948. This privilege, if exercised, would have resulted in the employees exercising it to have their seniority at West Albany dovetailed on the appropriate roster at the Harmon Locomotive Terminal and, if they thereafter stayed at Harmon for more than thirty (30) days after doing so, to lose their seniority at West Albany. Claimants were extended this privilege by letter dated March 5, 1952 but declined it, staying on at Collinwood but also retaining their seniority as machinists at West Albany.

Subsequently, on November 14, 1952, pursuant to an agreement between representatives of carrier and the organization entered into on October 30, 1952, all employees who, due to reduction in forces, had been furloughed from West Albany Locomotive Shop seniority roster since March 5, 1952 were notified that they would be permitted, if they so desired, to transfer to Collinwood Diesel Heavy Repair Shop at Collinwood, Ohio, and have their seniority date at West Albany dovetailed on the appropriate seniority roster at Collinwood. Six machinists elected to do so.

Claimants contend this resulted in their being discriminated against because of the fact that at that time they still held their seniority on the machinists' roster at the West Albany Locomotive Shop.

If the purpose of the agreements of February 1, 1952 and October 30, 1952, pursuant to which the notices of March 5, 1952 and November 14, 1952 were issued, was to give furloughed employees from West Albany Locomotive Shops a chance to follow their work, we think these claimants were discriminated against because they were never given an opportunity to go to Collinwood, where heavy repair duties on Diesels are being performed, and

have their seniority at West Albany dovetailed on the appropriate roster at Collinwood, as was given to machinists furloughed after March 5, 1952.

When, on October 30, 1952, the organization and carrier representatives sought to deal with the men furloughed from West Albany these claimants had seniority at that point as machinists dating from 1922. It was the duty of organization and carrier representatives, in dealing with that seniority, to treat all alike and give them an equal opportunity to protect it. We do not think that giving those who had been furloughed prior to March 5, 1952 an opportunity to go to Harmon, which they did not choose to take, is a basis for eliminating them from any arrangement permitting furloughed men to go to Collinwood. The fact that they did not elect to go to Harmon in no way qualified or limited their seniority right at West Albany. They still retained their seniority there and the organization and carrier representatives were duty bound to respect that right when dealing therewith. We find what was here done took from these claimants the benefit of some twenty-nine (29) years of seniority, for the parties then knew that the West Albany Shop would soon be closed, which it was in December 1954. To give one an opportunity which he does not choose to take, does not in any way destroy the rights he already has. Consequently we do not think the option given claimants by the letter Dated March 5, 1952 was any proper or sufficient basis to make the distinction which resulted from the agreement of October 30, 1952.

But are we privileged to say that carrier must dovetail these claimants' seniority at West Albany on the appropriate seniority roster at the Collinwood Heavy Repair Shop at Collinwood? We think not, for to do so would be in violation of Rule 31 of the parties' agreement. All that we can hold, and do, is that the agreement of October 30, 1952 discriminates against these claimants and is, because of that fact, void. The organization can now either enter into an agreement with the carrier that will give all employes, or any class thereof such as machinists, who were furloughed from the West Albany Shop because of force reduction due to dieselization, but who have retained their seniority at that point, the right to displace at Collinwood and have their seniority date at West Albany dovetailed on the appropriate roster at Collinwood, or limit those who have moved to Collinwood from West Albany to a seniority date in keeping with the provisions of Rule 29 of the parties' agreement and restore their seniority on the appropriate roster at West Albany. In other words, all of a class or craft on a seniority roster at a given point must be treated alike as to their seniority at any time an agreement is entered into affecting it unless, as we have already stated, there is some substantial basis for treating some of them different than others.

We realize that seniority at West Albany, as such, is valueless because the shop at that point has been closed. However, for the purpose of permitting those holding seniority at West Albany to displace and work at some other point, it may still be of great value as twenty-nine (29) years of seniority surely must have some value in this respect. We think claimants' contention as to discrimination must be sustained but the request that carrier be ordered to dovetail the claimants' seniority dates at West Albany on the appropriate roster at Collinwood Diesel Shop must be denied.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 19th day of November, 1956.