

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES
READING COMPANY**

STATEMENT OF CLAIM: "That Edward Emert be reinstated to the position of Section Foreman at East Penn Junction, Pa., with pay for all time lost from November 11, 1936."

STATEMENT OF FACTS: The employees state the facts essentially as follows:

Edward Emert, Section Foreman at East Penn Junction was called to Reading, November 10, 1936, and advised by Mr. Dunn, Division Engineer, that he was to be displaced by Mr. Ervin Wisser, and that he, Mr. Emert, was to be transferred to Catasauqua, Pa., to fill the position of section foreman at that point, which was the position formerly held by Mr. Wisser.

The carrier states the facts essentially as follows:

On October 16, 1932, Edward Emert, a former Supervisor on the Reading Division was appointed Section Foreman at East Penn Junction.

By November 10, 1936, the services of Emert as Section Foreman had become so unsatisfactory that it was, in the judgment of the responsible officers, necessary that he be replaced with a competent foreman. Following past practice in his case, and in an effort to work as little hardship as possible on a man sixty-four (64) years of age and who had been in the service thirty-six (36) years, they decided to send him from Allentown (East Penn Junction) to Catasauqua, four or five miles away, to continue as Section Foreman at the latter point where the duties were lighter, and bring the Foreman from Catasauqua, who was younger and efficient, to East Penn Junction—the rates of pay were East Penn Junction \$149.50, Catasauqua \$147.00.

On November 14, 1936, General Chairman Miller wrote Division Engineer Dunn as follows:

"Would advise that Mr. Wisser's section has not been abolished and would not have any right to displace Mr. Emert. Furthermore Mr. Emert did not ask to be transferred to any other section.

We contend that Mr. Emert should be placed back on his section at East Penn Jct., and reimbursed for time lost.

Thanking you for a prompt reply, I am,"

On November 27, 1936, Supervisor Jefferis wrote Emert at his home, Allentown, Pa., as follows:

Edward Emert entered the service of the Reading Company in 1900. He filled positions of section laborer, timekeeper, clerk and assistant supervisor successively until 1906 since which time he had been in an official position as supervisor until 1932. His service therein became unsatisfactory to the extent finally that it was necessary to relieve him as supervisor. He was placed on the position of section foreman at East Penn Junction on October 16, 1932. Conditions on his section became bad and were subject of constant complaint; as they continued to grow worse it became necessary to make a change, and this was done on November 10, 1936, by putting him in the position of section foreman at Catasauqua, Pa., and at the same time placing Section Foreman Wisser then at Catasauqua as section foreman at East Penn Junction.

On November 10, 1936, when called to the Division Engineer's Office and notified that he was to report at Catasauqua the following day for duty as Section Foreman, he stated that he wanted to be off duty until further notice. He was advised to make application in accordance with rule 12 (a), reading:

"Employee, upon application in writing, may be given in writing a furlough for six (6) months or less, on or before the expiration of which he may, by application in writing, resume employment or secure an extension, and failure to do so will forfeit his seniority."

He has not up to this time made such application, but has absented himself without permission.

After General Chairman Miller's protest as to sending Emert to Catasauqua and Wisser to Allentown when no vacancy had occurred, this was corrected as previously stated, and on November 27, 1936, Emert was instructed, as per letter previously quoted, to report at Allentown and make claim for position of laborer. This he refused to do and thereby again absented himself from duty without permission, and was also guilty of insubordination—refusal to obey instructions.

In refusing to report for work as section laborer, pending settlement of his so-called grievance, he clearly violated Rule 23 of the agreement, reading as follows:

"Prior to the assertion of grievances as herein provided, and while questions of grievances are pending, there will neither be a shut-down by the employer nor a suspension of work by the employees."

The failure of this man to handle this matter in accordance with the agreement, namely, obey the instructions given him and handle the case further in the orderly manner provided by the agreement and the Railway Labor Act, through his accredited representatives, resulted in his violating the agreement, being insubordinate and voluntarily placing himself in a position where his claim as to pay could not be considered.

OPINION OF BOARD: The employees base their claim in this case on the right of the management to transfer occupants of positions and contend that the Carrier violated the agreement when they made such a transfer.

The carrier contends the transfer was made for efficiency in the service and following the handling of the claim on the property, conceded their error, and changed their instructions to Mr. Emert from making a transfer to that of demotion, following same by bulletining the position in question and filling it in accordance with the rules.

The Board agrees that transfers of occupants of positions are not permissible under the agreement, and therefore Emert having been wrongfully displaced is entitled to consideration for payment while such violation continued. However, this condition was changed on November 27, 1936, when

the carrier demoted Mr. Emert and filled the vacancy in accordance with the rules; from that period on the question was one of discipline and not of a violation of the rules as to transfers, and as the contention is based on the right to transfer and not on discipline, the Board agrees that the latter question is not covered in the contention, therefore, that portion of the claim cannot be allowed.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence, finds and holds:

That the carrier and the employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Company violated the agreement in transferring occupants of positions of Section Foreman at East Penn Junction and Catasaququa.

AWARD

(a) Position of employes sustained relative to trading of positions, and Edward Emert will be paid for time lost between November 11, 1936, and November 27, 1936, the date he was notified of demotion and vacancy was bulletined and filled in accordance with schedule rules.

(b) Emert to be continued as an employe of the Company and he will be given such position as his seniority entitles him to under the rules in effect.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 1st day of October, 1937.