

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute: { Brotherhood Railway Carmen of the United States
and Canada
{ Illinois Central Gulf Railroad Company

Dispute: Claim of Employes:

1. That Carman James E. Atkinson was unjustly treated and the provisions of the current agreement were violated when he was furloughed after completion of his apprenticeship when he became a carman with retroactive seniority and a junior carman was permitted to work from September 24, 1977 to December 26, 1977.
2. That, accordingly, the Illinois Central Gulf Railroad be ordered to reinstate this employe with seniority rights unimpaired and compensate him at carmen's rate for all time los, plus, six percent (6%) interest for all wages deprived of. Also, fringe benefits (vacations, holidays, premiums for hospital, surgical, medical and group life insurance) deprived of since September 24, 1977 until he was restored to service December 26, 1977.

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.

Parties to said dispute waived right of appearance at hearing thereon.

There is no dispute with respect to the facts in this case. Claimant, Mr. Atkinson, was hired as a carman apprentice on November 15, 1973, and completed his apprenticeship on September 21, 1977. He was furloughed on September 22, 1977, and called to back on December 23, 1977, but for personal reasons did not report until December 27, 1977.

Sometime late in January or early February of 1978, the parties discovered that the Claimant had been given an improper seniority date due to the fact that the Carrier utilized a customary contract provision which had been outmoded by the provisions of an agreement signed March 5, 1973, resulting from the merger of the G.M. & O. and the Illinois Central Railroads. The merged contract provided that the Illinois Central Apprenticeship Agreement would be utilized to determine seniority. That agreement provided for a retroactive seniority date

upon completion of apprenticeship. The parties in this instance were on former G. M. & O. property and utilized the customary G. M. & O. contract provision to establish the seniority date as of the completion of the apprentice period. When the mistake was discovered it was rectified by the compilation of a new seniority list on February 8, 1978.

The record indicates that use of the proper contract provision would have placed Claimant in a more senior position and he would not have been furloughed. The claim is for pay during the time Mr. Atkinson was furloughed out of seniority.

The Carrier raises a serious procedural error and points out that the claim is barred under the time limit rule of the contract. That rule provides in pertinent part:

"(a) All claims or grievances must be presented in writing by or on behalf of the employee involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based."

Claimant was furloughed on September 22, 1977. The claim was filed on March 1, 1978, well beyond the time limit allowed.

The Organization raises the defense that it was not until the January 1, 1978 Seniority Roster was posted and protested which led to the corrected roster published on February 8, 1978, that it was aware of Mr. Atkinson's improper furlough. Therefore the occurrence on which the claim was based became the date on which they had knowledge of the furlough out of seniority and the claim was filed within 60 days of that date.

This Board is aware of awards which have held that the time limit can be extended in cases where Claimant could not have had knowledge of the occurrence which led to the action grieved.

Such is not the problem here under consideration. The claimant had knowledge of the seniority utilized to furlough him. His seniority was again utilized to recall him on December 23, 1977. Both of those actions by the Carrier clearly illustrated the seniority roster which was being utilized. The Claimant should have checked his seniority status at the termination date of his apprenticeship. He also had the opportunity to check his seniority status at the time he was furloughed. In this respect, the responsibility fell squarely on his shoulders, his failure to check his seniority status resulted in his being furloughed. The record does not indicate why the parties took until February 8, 1978, to publish the proper roster. There was apparently no problem in obtaining a correction when the parties got together. It is an unusual situation when both parties to an agreement lack knowledge of the proper apprentice section to apply in determining seniority. In the case at bar the occurrence which gave rise to the claim was the furlough date. The time limit rule does not make provision for time to determine whether or not a good claim can be made. We are constrained by the time limit rule from consideration of the grievance.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By  _____
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 18th day of March, 1981.