

Award No. 349

Docket No. 376

2-StLSW-CM-'39

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 45, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (CARMEN)**

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That Rule 21-1 of agreement between the aforesaid parties was violated by the carrier in showing Mr. C. M. Nichols' seniority date as locomotive carpenter as of May 13, 1923, when he was not employed as a locomotive carpenter until June 1, 1929. They have no right to set his seniority date up six years and one month before he was employed as locomotive carpenter.

EMPLOYES' STATEMENT OF FACTS: Mr. C. M. Nichols was employed as a locomotive truckman on May 13, 1923. On February 4, 5, 6 and 7, 1924, he worked as a locomotive carpenter, and on infrequent occasions between February, 1924, and June 1, 1929, worked as such, but regularly worked as a locomotive truckman until June 1, 1929, when he was assigned as a locomotive carpenter. He now carries only one seniority date, which is locomotive carpenter, May 13, 1923.

POSITION OF EMPLOYES: We take the position that Locomotive Carpenter C. M. Nichols' seniority date should be corrected and that it should be shown as of June 1, 1929, as locomotive carpenter instead of May 13, 1923, as the company has violated Rule 21-1 when they allowed his name and date of seniority to appear on seniority list as of May 13, 1923. Rule 21-1 reads as follows:

"21-1. Seniority as provided for herein shall be determined by the days elapsing after the date of last employment, including time lost by leave of absence, reduction in force, or other excused cause, confined to each point of employment separately, by the craft or subdivision thereof (the seniority of journeymen, helpers, and apprentices being separate as between themselves) and seniority list shall be posted as of January 1st of each year by the Trustee at each respective place of employment, and when so posted shall be binding and conclusive on all parties after the expiration of thirty (30) days or until changed by mutual agreement of the employees and the Trustee, to-wit: * * *

The carrier claims that Mr. Nichols worked as locomotive carpenter February 4, 5, 6 and 7, 1924, and all the month of October, 1924, in the place of Locomotive Carpenter L. M. Jackson, who was off on account of sickness, but we contend that he was not employed as a locomotive carpenter, but only working temporarily in the place of L. M. Jackson from day to day, expecting him to return every day. Mr. Jackson was employed as roundhouse locomotive carpenter and Mr. Nichols was employed as round-

That Mr. Nichols is entitled to a seniority date of May 13, 1923, as engine truckman, the carrier does not dispute. An error appears to have been made in some manner with reference to his seniority. His name appeared on the roster as follows:

Date of Roster	Classification	Seniority Date
Dec. 10, 1928	Engine Truckman	5-13-23
Sep. 1929	" "	"
Jan. 1, 1930	" "	"
Jan. 1, 1931	" "	"
Jan. 1, 1932	Loco. Carpt. Lead Man	"
Jan. 1, 1933	" " " "	"
Jan. 1, 1934	" " " "	"
Jan. 1, 1935	" " " "	"
Jan. 1, 1936	" " " "	"
Jan. 1, 1937	Under heading of Coach Builders, shown as (Loco. Carpt. Lead Man)	"
Jan. 1, 1938	Ditto	"
Jan. 1, 1939	"	"

For over seven years, the seniority date of May 13, 1923, for Mr. Nichols, as locomotive carpenter, has remained unprotested, and the agreement dated January 1, 1937, as well as the several agreements effective prior thereto, provides: " * * * and seniority list shall be posted as of January 1st of each year * * * and when so posted shall be binding and conclusive on all parties after the expiration of thirty (30) days or until changed by mutual agreement of the employees and the Trustee * * *."

Neither the representatives nor Mr. Nichols protested this seniority until the instant case was presented early this year. In Docket No. 307, Award No. 301, this Board ruled: " * * * Even if there were not the special circumstances listed above, the conclusion would still be that Hartung could not now claim rights on which he had slept for thirteen years."

The Carrier's Statement of Facts conclusively shows that Mr. Nichols first worked as a carpenter on February 4, 1924. We, therefore, request that this Board find that Mr. Nichols is entitled to seniority as now carried on roster; but, if the decision should be that an adjustment should be made, then the record reveals that Mr. Nichols should be awarded dates as follows:

A—Locomotive truckman	5/13/23
B—Locomotive carpenter	2/ 4/24

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 waived right of appearance at hearing thereon.

"Seniority

21-1. * * * and seniority list shall be posted as of January 1st of each year by the Trustee at each respective place of employment, and when so posted shall be binding and conclusive on all parties after the expiration of thirty (30) days or until changed by mutual agreement of the employees and the Trustee, * * *"

On the facts submitted in the instant case, this Division cannot revise the existing seniority roster.

The issue involved in this case is one to be disposed of as provided for in the rule—" * * * by mutual agreement of the employees and the Trustee, * * *."

AWARD

Claim to be disposed of in accordance with aforesaid findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 29th day of June, 1939.