

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

AMERICAN FEDERATION OF RAILROAD WORKERS
THE PITTSBURGH AND LAKE ERIE RAILROAD COMPANY
THE LAKE ERIE AND EASTERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That all of the provisions of the memorandum of understanding or agreement effective January 16, 1928, are definitely authorized to govern the parties signatory thereto, including provision No. 2, page 2, which reads:

"It is understood and agreed that all New York Central Car Department employes must exercise their seniority under this agreement within a period of fifteen (15) days from January 16, 1928."

If so, shall the former New York Central employes who did not exercise their seniority under this agreement be assigned to their correct seniority standing, as of the date they were employed, and shall the positions they are now holding be bulletined as positions exempted for the Pittsburgh and Lake Erie employes as directed by the agreement.

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.

The parties to this dispute are agreed that a memorandum of agreement having for its purpose the consolidating or dovetailing of the car department seniority roster at McGuffey Street and Coalburg of the New York Central Railroad, with the rosters of the car department at East Youngstown and Struthers of the Pittsburgh and Lake Erie Railroad, was properly consummated to become effective January 16, 1928.

The petitioner (American Federation of Railroad Workers) contends that certain former New York Central car department employes now shown on the consolidated seniority roster with their former New York Central seniority dating is incorrect, asserting that these particular employes did not exercise their seniority within a period of fifteen (15) days from January 16, 1928, as required under the provisions of the memorandum of agreement, reading:

"2. It is understood and agreed that all New York Central Railroad Car Department employees must exercise their seniority under this agreement within a period of fifteen (15) days from January 16, 1928."

The evidence of record, and in which the parties are agreed, definitely shows that when the seniority rosters were revised, as of September 1, 1928, the employees whose seniority standing is now in controversy were placed on the consolidated roster as contemplated by the memorandum of agreement effective January 16, 1928, and that the same employees have been carried on each successive seniority roster posted twice each year since September 1, 1928.

The following paragraph of Rule 50, agreement between the Pittsburgh and Lake Erie Railroad Company, the Lake Erie and Eastern Railroad Company, and the American Federation of Railroad Workers, effective October 1, 1926, and revised February 13, 1928, reads:

"The Master Car Builder will revise each seniority district roster during the months of January and July of each year. A copy of the revised roster will be posted in each General Foreman's office and a copy transmitted to the General Chairman and the local chairman in each district."

The record filed in the instant case contains no evidence of any protest of any kind having been made, by the organization now entering complaint, against the seniority dates on rosters published in accordance with the paragraph of Rule 50 quoted above, during a period of twelve years—from the year 1928 until the year 1940.

It is the opinion of this Division of the National Railroad Adjustment Board that the representatives of the employees acquiesced in the transactions involving seniority of the employees affected, such as occurred on March 1, 1928, and September 1, 1928, both subsequent to January 16, 1928, since the record filed with the Board discloses no protest of the seniority dates given the employees in the interim, from January 16, 1928, until the year 1940.

AWARD

Claim of the employees denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1943.