

Award No. 1958

Docket No. 1812

2-A&S-TWUofA, CIO-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**RAILROAD DIVISION, TRANSPORT WORKERS UNION OF
AMERICA, C. I. O.**

ALIQUIPPA AND SOUTHERN RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEE: That Mr. Egbert C. MacChesney was hired as a laborer on July 7th, 1949. This can be proven by the Carrier's payroll records, which the Committee has seen, but have no way of getting from the Carrier. These records show that Mr. Egbert C. MacChesney worked as a laborer from July 7th, 1949 until July 21, 1949. Then again he worked as a laborer from July 30, 1949 until August 21, 1949.

That the Organization does have a contract with the Aliquippa and Southern Railroad Company, which is binding on both parties and that Article 12, "Seniority", paragraphs (a) and (g) of this contract were violated.

That the Carrier was in error when it did not give Mr. Egbert C. MacChesney his rights as a laborer, according to contract, since he worked as a laborer from July 7, 1949 until July 21, 1949 and then he again worked as a laborer from July 30, 1949 until August 21, 1949.

That the Carrier reimburse Mr. Egbert C. MacChesney for eight (8) hours at pro-rata rate of laborer for each of the following days, due to arbitrary action of the Carrier, when the claimant was furloughed without being given proper consideration as to his rights as a laborer. Dates are as follows:

February 16, 17, 18, 19, 22, 23, 24, 25 and 26, 1954. March 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 29, 30 and 31, 1954. April 1, 2, 5, and 6, 1954.

EMPLOYEES' STATEMENT OF FACTS: That Mr. Egbert C. MacChesney was hired as a laborer on July 7, 1949, which can only be proven by the carrier's payroll records which the organization has no way of getting so that it could be used as an exhibit in this case.

That the Railroad Division, Transport Workers Union of America, C. I. O., formerly "the United Railroad Workers of America, CIO" does have a collective bargaining agreement, effective, December 31, 1946, with the Aliquippa

there might be a number of days when no such vacancies would occur. It was understood that extra hostler-helpers on such days when there were no hostler-helper vacancies would perform laborer's work, although they were not regularly assigned to the position of laborer. When an employe is regularly assigned to the position of laborer, he is then given seniority listing as such. This, indeed, is what happened in the case of Mr. MacChesney in June, 1953, but until that time, the carrier contends, his work as a laborer was strictly incidental to his other regularly assigned positions, and it did not entitle him to seniority listing. MacChesney himself presumably agreed with this position, in never having raised a question as to the proper date of his laborer seniority until the present time claims were filed.

For the reasons above set forth, the carrier submits that there has been no violation by it of any portion of the regulations agreement; that Mr. MacChesney was properly furloughed on February 16, 1954; and that the claim should be denied.

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.

Claimant contends that he was improperly denied seniority rights as a laborer which he claims were accruing to him as of July 7, 1949. What rights he may have had in that classification were lost to him by virtue of his failure to appeal within thirty (30) days from February 1, 1950, when the seniority roster was posted without listing his seniority date thereon as a laborer. Article 12, Section (h) governs and is mandatory. See Awards 185, 942.

The posting occurred six months and twenty-four days after his initial employment. The Organization points out that the rule requires that the roster be posted every six months. The delay in posting had nothing to do with claimant's appeal rights and it was not shown to have prejudiced him in any way.

We are barred by the foregoing from considering the case on its merits.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 22nd day of June, 1955.