

Award No. 2335
Docket No. 2334-I
2-AT&SF-I-'56

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

RALPH O. SHASTEEN (Individual)

**THE ATCHISON, TOPEKA AND SANTA FE RAILWAY
COMPANY**

DISPUTE: CLAIM OF EMPLOYEE:

1. That under the current Agreement, in addition to the Agreement in effect prior to August 1, 1945, the Carrier has improperly declined to permit Ralph O. Shasteen to exercise seniority established under the aforementioned Agreements.

2. That the Carrier has denied the aforementioned employe the contractual right to maintain employment consistent with seniority established.

3. That, accordingly, the Carrier be ordered to reassign the aforementioned employe to proper position in the Carrier's Power House at Albuquerque, New Mexico consistent with that which could be normally obtained through proper exercise of established seniority procedures.

EMPLOYEES STATEMENT OF FACTS: Ralph O. Shasteen, hereinafter referred to as the claimant, having been employed by the Atchison, Topeka and Santa Fe Railway Company, hereinafter referred to as the carrier, in various capacities of service for the past twenty-six years, was employed in the carrier's mechanical department at Albuquerque, New Mexico, on January 8, 1944 as machinist helper, transferred to electrician helper on August 21, 1944, and was continuously employed in that capacity until November 8, 1944, at which time he was, at the demand and pleasure of the carrier, transferred to the power house at Albuquerque as engine room oiler.

Claimant occupied this position as third shift engine room oiler for 4.5 hours in excess of five working days in such capacity, or a total of 44.5 hours as proven by the carrier's pay-roll records. Claimant was then transferred to electrician helper, occupying such position until December 17, 1946. He was further transferred to engine room oiler, occupying such position until February 2, 1947; was transferred to electrician helper for the period of one day whereupon he was again transferred to the power house at Albuquerque as stationary fireman, in which plant he was continuously so employed until furloughed in force reduction August 15, 1955. Claimant is presently employed in the carrier's maintenance of way department.

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."

First Division Award 12782:

"The record reveals that no complaint was made by Mr. Kohler from the time his roster date was fixed in July, 1936, until May 4, 1942. Following that, General Chairman McCabe of the Engineers handled the matter in conference with General Manager McIntyre on May 13, 1942. The fact that the roster rating assigned to Mr. Kohler in 1936 stood unchallenged until May 4, 1942, can be accepted only in the light that Mr. Kohler slept on his rights.

After careful consideration of all the evidence contained in the record, the Division finds no justification for making a change at this late date in the roster standings of Mr. Kohler and Mr. Juhas."

Without prejudice to the carrier's position that the claim is barred from consideration because it was not processed within the time limits prescribed by the controlling agreements, the claim should also be dismissed because it is entirely without merit. Briefly stated, Mr. Shasteen claims he is entitled to a seniority date of November 8, 1944 as engine room oiler because of the temporary service he performed in that capacity at the time for a period of but five days. At the time in question, Mr. Shasteen was working as an electrician helper, a position covered by the shop crafts' agreement revised July 1, 1937 and transferred to a temporary assignment on a position of engine room oiler, a position covered by the stationary engineers, firemen, and oilers' agreement revised July 1, 1937, in the place of L. W. Curran who was temporarily absent from his position. Rule 10(1) of the latter agreement, which was the controlling rule governing the establishment of seniority under that agreement, which included the class of engine room oiler, read as follows:

"(1) Seniority of employes covered by this agreement shall begin on date of **permanent** assignment." (Emphasis added.)

Since Mr. Shasteen was not permanently assigned as engine room oiler in November 1944, it is crystal clear that the temporary service he performed as engine room oiler at that time did not, as he seems to believe, permit him to establish seniority as engine room oiler.

Carrier respectfully requests that this Board dismiss Mr. Shasteen's claim because of lack of jurisdiction for failure to file claim with the Board within the time required by the agreement and because it is entirely without support of any agreement rule.

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.

The claimant's dispute as handled with the carrier involves the question of his seniority date as an engine room oiler at Albuquerque, New Mexico. The seniority list dated January 1, 1953 shows October 20, 1952 as the Claimant's seniority date and such list is the first carrying the claimant by name and seniority date as an oiler. This rating has not been changed. Article 6, Rule 19 (d) of the Current Working Agreement provides:

"Seniority lists will be prepared from the Railway's record as of January 1st of each year and will be open to protest for a period of sixty (60) days from the date of posting. When evidence is presented by an employe or his representative to the proper officer proving that an error exists in a seniority date, such error will be corrected."

Seniority lists were posted in 1953 and 1954 and the record does not reveal any protest was made. Mr. Shasteen, the claimant, was silent concerning his seniority date of October 20, 1952 until January 7th, 1955.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 30th day of November, 1956.