

Award No. 2818
Docket No. 2587
2-NOUPT-EW-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Electrical Workers)**

NEW ORLEANS UNION PASSENGER TERMINAL

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Electrical Foremen V. G. Groomer, J. A. Bastian, Jr., and H. F. Conzelmann have been improperly granted seniority rights as Electricians on the Electricians' seniority roster.

2. That accordingly the Carrier be ordered to remove their names from the Electricians' seniority roster.

EMPLOYEES' STATEMENT OF FACTS: An implementing agreement was negotiated between the New Orleans Union Passenger Terminal (hereinafter referred to as the carrier) and the various labor organizations, the electrical workers being one of the involved labor organizations, dated April 10, 1953. The implementing agreement served to recruit from the user railroads affected by the coordination of passenger facilities in New Orleans, employees who would comprise the mechanical force of the terminal. Paragraph 2 of the implementing agreement provided for the establishment of seniority rosters for mechanics of each craft on the terminal with the position of each mechanic on the rosters determined by dovetailing their home road seniority date with those of all other mechanics on the respective rosters.

Prior to the coordination of passenger facilities in New Orleans, V. G. Groomer was employed as an electrician and held seniority as an electrician on the Southern Railway of 2-26-44. J. A. Bastian, Jr. was employed as an electrical foreman and held seniority as an electrician on the Louisville and Nashville Railroad of 11-9-1926. H. F. Conzelmann was employed as an electrical foreman and held seniority as an electrician on the Illinois Central Railroad of 5-18-51. Groomer, Bastian and Conzelmann were offered and accepted positions as electrical foremen on the terminal and commenced work

November 9, 1926 (See carrier's Exhibit No. 2). Positions on this roster with seniority dating from 1926 to 1953 were affected by the coordination (See carrier's Exhibit No. 11), therefore Mr. Bastian's position on this roster with a seniority date of 1926 was also affected.

Prior to the coordination Mr. Conzelmann held position No. 55 on the Illinois Central Railroad electricians' seniority roster with seniority date of May 18, 1951 (See carrier's Exhibit No. 3). Positions on this roster with seniority dating from 1917 to 1953 were affected by the coordination (See carrier's Exhibit No. 12), therefore Mr. Conzelmann's position on this roster with a seniority date of 1951 were also affected.

Paragraph 1 (b) of the implementing agreement of April 10, 1953 provided for the initial complement of employes for the terminal to be recruited from the user lines on a quota basis and in the order of their home road seniority. The Southern Railway quota was four (4) electricians; Louisville and Nashville Railroad, fifteen (15) electricians; and Illinois Central Railroad, thirty-four (34) electricians. The three (3) named foremen would have been included in the quotas from these roads as electricians had they not been selected as foremen because their seniority would have entitled them to jobs on the terminal as electricians.

Rule 17 of the Rules and Working Conditions Agreement of January 13, 1954 provides for promotion of mechanics to foremen and Paragraph C of Rule 17 specifically provides for retention of seniority rights as mechanics in the event of promotion. The men involved commenced their duties as foremen subsequent to execution of the agreement of January 13, therefore their rights as electricians are protected by that agreement as well as the implementing agreement.

If the coordination had not taken place Messrs. Bastian and Conzelmann would have remained on their home road in the capacity of electrical foremen retaining seniority as electricians, and Mr. Groomer would have remained on his home road as an electrician and retained seniority on the electrician's roster. Inasmuch as they held seniority in New Orleans and their seniority as electricians was affected by the coordination, it is our position neither the brotherhood or the terminal could take away their seniority as electricians.

For these several reasons, the terminal requests that your Division deny these claims.

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.

At issue here is the propriety of granting a place on the electricians' seniority roster to three (3) employes, V. G. Groomer, J. A. Bastian, Jr. and H. F. Conzelmann, presently employed and classified as electrical foremen.

The facts are not in dispute. The New Orleans Union Passenger Terminal opened on April 16, 1954. The electricians needed to staff the facility; some fifty-three (53) in number, were obtained from the staffs of three (3) user

railroads. This was accomplished by bulletin and bid. In conjunction with the staffing of this facility, a document, designated as an Implementing Agreement was entered into by and between the Terminal and System Federation No. 99, said agreement bearing date of April 10, 1953. Under the provisions of this agreement employees were selected on a proportionate basis, with seniority of each employee to be dovetailed on the basis of seniority acquired on his prior or home carrier.

The organization asserts that inasmuch as the above named individuals were hired in as foremen outside of the total pro rata quota, and never worked as electricians for the Terminal, they acquired no seniority rights as electricians since they were not in service as electricians on the opening date of the Terminal, such date being the date Terminal seniority commenced to accrue.

In determining the seniority status of the three (3) employees with whom we are here concerned, it is necessary to consider both the Implementing Agreement, under and by which the Terminal was staffed, and the rules agreement which was negotiated to govern the relations of the parties after the facility commenced operations. It is clear that the parties intended by the Implementing Agreement that while no employee transferred to the new facility could retain his seniority on his home carrier, such employee would carry with him, and be credited with such seniority as he might have accrued on his home carrier. This was true for all employees who transferred from their home carrier to the new Terminal facility. The Implementing Agreement covers "employees" and makes no mention or differentiation between classification thereof. The purpose of the Implementing Agreement was to guide the parties' steps in creating a work force for the Terminal, as well as to establish rights of employees transferring thereto.

The rules agreement did not become effective until after an individual had acquired employee status with the Terminal. We cannot properly conclude therefore that it was the intent of the parties that any employee was to lose his prior seniority. We further conclude that the employees in question retained their seniority on a dovetail basis as provided in Article 2 of the Implementing Agreement, and that their names should be retained on the seniority roster in accordance with the above-mentioned section of the Implementing Agreement. For the reasons stated, the claim of the organization is without merit.

AWARD

Claims disposed of as per above findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 14th day of April, 1958.

DISSENT OF LABOR MEMBERS TO AWARD 2818

The claim of the employees is:

1. That under the current agreement Electrical Foremen V. G. Groomer, J. A. Bastian, Jr. and H. F. Conzelmann have been improperly granted seniority rights as Electricians on the Electricians' seniority roster.

2. That accordingly the Carrier be ordered to remove their names from the Electrician's seniority roster.

The majority states:

"In determining the seniority status of the three (3) employees with whom we are here concerned, it is necessary to consider both the Implementing Agreement, under and by which the Terminal was staffed, and the rules agreement which was negotiated to govern the relations of the parties after the facility commenced operations.

* * * * *

The Implementing Agreement covers 'employees' and makes no mention of differentiation between classification thereof."

This erroneous conclusion of the majority is contrary to the language and intent of the Agreement between the New Orleans Union Passenger Terminal and System Federation No. 99 including the Agreement concerning changes in operation at New Orleans, La., pursuant with Interstate Commerce Commission Finance Docket No. 15920, sometimes referred to as the "Implementing Agreement", covering machinists, boilermakers, blacksmiths, sheet metal workers, electrical workers, carmen and firemen and oilers and did not cover supervisors of these crafts. The majority is attempting to amend the rules of this agreement by an award of the Second Division in violation of Rule 106 and the Railway Labor Act as amended.

The record discloses that an Implementing Agreement was negotiated between the New Orleans Union Passenger Terminal and the various shop craft organizations comprising System Federation No. 99, including the International Brotherhood of Electrical Workers, which became effective April 10, 1953. This implementing agreement served to recruit from the user railroads affected by the coordination of passenger facilities in New Orleans, employees who would comprise the mechanical force of the Terminal. Paragraph 2 of the Implementing Agreement provided for the establishment of seniority rosters for **mechanics** of each craft of the Terminal with the position of each **mechanic** on the rosters determined by dovetailing their home road seniority date with those of all other **mechanics** on the respective rosters. Paragraph (b) of the Implementing Agreement provided a quota of Electricians to be taken from the user roads, as follows:

Southern Railway	4 Electricians
Louisville & Nashville R. R.....	15 Electricians
Illinois Central R. R.....	34 Electricians

Paragraph (c) provided the procedure to carry out the provisions of Paragraph (b) by bulletining the respective allotment of new positions to the concerned classifications of employees on each carrier who were available for immediate service on the Terminal. The foregoing quotas of Electricians were filled after the bulletin procedure had been carried out and constituted the complete force of Electricians who went to work on the Terminal on April 16, 1954, the opening date. Future additions to the force of mechanics covered by the Implementing Agreement are provided for in paragraph (d) which provides that such employees shall have their seniority on the Terminal start as of the first date they draw compensation.

On December 17, 1953 Terminal Manager C. J. Wallace addressed a letter to V. J. Groomer offering him the position of Relief Assistant Supervisor of Electrical Service. On December 21st Mr. Groomer accepted the position.

On December 17, 1953 Terminal Manager C. J. Wallace addressed a letter to John A. Bastian, Jr. offering him the position of Asst. Supervisor of Electrical Service. On December 28, 1953 Mr. Bastian accepted the position.

On November 11, 1953 Terminal Manager C. J. Wallace addressed a letter to H. F. Conzelmann offering him the position of Asst. Supervisor of Electrical Service. On November 15, 1953 he accepted the position.

On April 16, 1954 Messrs. Groomer, Bastian and Conzelmann started service as foremen at the Terminal separate and apart from the 34 Electricians constituting the total force of electricians provided for by the Implementing Agreement. The current agreement governing the rules and working conditions of these electricians became effective on the date of Terminal opening, April 16, 1954.

The carrier has placed the names of Groomer, Bastian and Conzelmann on the electricians' seniority roster with their seniority date they carried on the railroad they left to accept employment on the Terminal, taking the position that Rule 17 permits this action.

Rule 17 provides:

"(A) **Mechanics in service** will be considered for promotion to positions of foreman.

(C) Employees accepting positions as foremen . . . shall retain their seniority where they last held seniority rights, . . ."

The carrier elected to employ these three individuals separately as supervisors or foremen outside the scope of the Implementing Agreement and the working agreement in effect and cannot now place them on the electricians' seniority roster. Their class or craft is covered by an agreement with the American Railway Supervisors Association. The instant employees were not mechanics in the service of the carrier when they accepted positions as foremen and therefore do not possess seniority as electricians under the terms of the controlling agreement provisions.

For the foregoing reasons we are constrained to dissent from the findings and award of the majority.

/s/ R. W. Blake

/s/ C. E. Goodlin

/s/ T. E. Losey

/s/ E. W. Wiesner

/s/ James B. Zink