

Award No. 2975
Docket No. 2397
2-C&O-CM-'58

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

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

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 41, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

THE CHESAPEAKE AND OHIO RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That under the current agreement Carman Helper Emery C. Ball's service rights were violated on February 10, 1949 and the said violation continued through March 5, 1950.

2. That accordingly the Carrier be ordered to compensate him for all wage loss suffered by him during this period of time.

EMPLOYEES' STATEMENT OF FACTS: Emery C. Ball, hereinafter referred to as the claimant, with carmen helper's seniority date of February 1, 1949 with the Chesapeake and Ohio Railroad Co., hereinafter referred to as the carrier, at Danville, W. Va., (see Exhibits A & B submitted herewith) was erroneously held out of service and a junior employe improperly called around him on February 10, 1949.

This claim has been handled with all carrier officials designated to handle such disputes up to and including the highest designated officer of the carrier, which complies with Article 5 of the August 21, 1954 agreement, with the result they all declined to make satisfactory settlement.

The agreement effective July 1, 1921 as subsequently amended is controlling.

POSITION OF EMPLOYEES: It is submitted that Carl Roland Hudson, an oiler and packer, with seniority date of February 10, 1949, a junior employe to Claimant Ball, was improperly worked from February 10, 1949 through March 5, 1950, when in accordance with seniority standing (Exhibits A & B) the claimant in this case should have worked.

The carrier's contention that the claimant had no seniority as an oiler and packer in February, 1949 is refuted by Exhibits A & B submitted herewith.

The carrier says that in order to conclusively dispose of this case, the Board should determine Ball's true seniority. Having done this, it will be plain that Ball will have no proper ground for his instant claim.

If the Board determines it cannot order change in Ball's seniority, then the question becomes one of what to do about the instant claim. As repeatedly shown herein, Ball's seniority date is definitely wrong. To give credence to Ball's instant claim will act to confirm and firmly establish the wrong seniority date to the permanent detriment of Hudson.

Hudson, it is to be noted, has already suffered as a result of Ball's incorrect seniority date, because he was laid off in 1954 while Ball worked. Hudson cannot now make claim for any loss sustained during 1954 under the barring rule, and as both Ball and Hudson are now at work, the proper solution is to correctly fix Ball's seniority date at March 6, 1950, denying the instant claim.

In the future, Hudson's seniority of February 10, 1949, and Ball's adjusted seniority of March 6, 1950, can then be observed and full equity will have been restored, Ball, by such action, having been treated more favorably than he would have been by virtue of having worked when Hudson would have stood to work ahead of him. Attention is also again called to the fact that Ball's claim has been allowed to sleep unreasonably.

If this claim is not conclusively disposed of in this handling by fixing Ball's permanent and correct seniority date, it will be seen that the situation will be vulnerable to claim by Hudson if he should be cut off at some later time and Ball is continued at work. Evidence in this case will clearly support such a claim by Hudson. However, the longer the incorrect date for Ball remains, the more difficult may be the changing, in view of which the carrier urges again that the Board here and now properly establish Ball's seniority, to the end that the matter be adjusted in its entirety as expeditiously as practicable in accordance with the declared purpose and intent of the Railway Labor Act.

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.

From the record herein, Claimant Emery C. Ball on March 6, 1950 was assigned a regular position as oiler and packer at Danville, West Virginia. Carl R. Hudson, while on furlough on February 10, 1949, was assigned a regular position as oiler and packer at Danville, West Virginia.

The oilers and packers' seniority roster of January 1, 1951 showed Hudson's seniority at Danville, West Virginia, as of February 10, 1949; and Claimant E. C. Ball's seniority as of February 1, 1949. However, Claimant Ball's correct seniority date was March 6, 1950 instead of February 1, 1949.

The correct seniority dates are matters creating valuable rights to the employees involved which cannot be done away with by an erroneous seniority roster.

Therefore, Claimant Ball's seniority rights were not violated herein, and his said claim must therefore be denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 13th day of October, 1958.