

Award No. 3572
Docket No. 3773-I
2-N&W-I-'60

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

PARTIES TO DISPUTE:

H. JACK PERKINS (Machinist)

NORFOLK AND WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF PETITIONER: I desire full machinist seniority as was given other men who served incomplete apprenticeship as I did. Also I desire payment for all time lost because of my seniority being incorrect * * * that my pension can be figured correctly at retirement.

EMPLOYEE'S STATEMENT OF FACTS: Notice of this claim having been heretofore filed, and approval having been granted to file this submission for seniority as machinist, which was denied me at the time I was advanced to machinist rate on December 13, 1933, and denied me several times since then, while other men, namely: Lambert, Sutherland, Brewer, and Johnson, who served incomplete apprenticeship as I did, were given full seniority at the time they were advanced to machinist rate. Now, some of these men, as well as others hired after I was hired, are working while I am cut off, and have also been allowed to work several times when the force was reduced—because of mine strikes, etc.—while I was furloughed because of incorrect seniority. This has been costly to me and will continue to be costly all my life if not corrected as, I understand, a pension at retirement is figured on an employee's total income from 1937. I, therefore, bring this submission of my claim before the Railroad Adjustment Board for correction of my machinist seniority, which, when corrected, should automatically mean payment for all time lost because of incorrect seniority. I was furloughed for the first time in 1938.

POSITION OF EMPLOYEE: First, an explanation may be in order for my delay in bringing this case before the Railroad Adjustment Board. Of course, the matter of my machinist seniority could not have been brought before the Railroad Adjustment Board at the time it was denied me in December, 1933, as the Board had not yet been organized. Neither my being removed from apprenticeship and placed on a differential rate instead of machinist rate in March, 1924, for the same reason. Then after the Board was organized, which I understand was July 31, 1934, and after I had apparently exhausted all efforts with the railroad, I asked the Board for information on two occasions when furloughed—once in 1947 and again in 1949—but I was called back to work each time before my plans were completed in regard to filing a submission or asking for a hearing. Then being relieved at getting back to work would tend to slow down my efforts, at least until the next furlough. Also, I was of the impression that to bring a case before the Adjustment Board would be very difficult and rather

ship. These men, however, served most or all of their apprenticeship in the machine and back shop and did little or no overhauler work. Thus, these men acquired a more varied knowledge of and ability in the machinist trade. Carrier asserts that all of the above actions were taken in full conformity with the rules and practices of that period and no subsequent rules or agreements have been made that would alter its action.

Carrier also wishes to point out that on January 10, 1940 a bulletin was posted on all of its shop bulletin boards. This bulletin required that employees should bring to the attention of their foreman, within sixty (60) days, any claim they might have regarding their seniority, and, further, after the sixty (60) days the seniority rosters would not be open to further question and the dates appearing thereon would be accepted and recognized as correct. This bulletin was posted on the shop bulletin boards as the result of Memorandum Agreement No. 6, which was between carrier and certain of its general chairmen, including the general chairman of the machinists organization. The memorandum agreement provided for the preparation of new seniority rosters; the posting of them at the various shops, and also the sixty (60) days in which employees should bring to the attention of their foreman any claim they might have regarding their seniority. The memorandum agreement further provided that sixty (60) days from date of the seniority rosters, they would no longer be open to further question. Carrier asserts it has no record that petitioner took any action as a result of this bulletin and that the bulletin, in itself, bars this claim from consideration.

Petitioner has stated in his notice of claim to your Board that he desires full machinist seniority as was given other men who served incomplete apprenticeship as he did. He has not cited a specific rule or rules of the current agreement he feels has been violated. The seniority rights of all employees arise out of contracts between the employer and the employees and/or duly authorized representative and exist only to the extent provided by the contract which created them. Your Board has recognized this principle in many previous awards. See Second Division Awards 272 and 2839. Carrier asserts that the rules of the current agreement, as regards the petitioner's seniority, have been complied with in all respects.

Carrier has shown petitioner's claim is without merit and requests it 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 employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

The evidence of record in this dispute indicates that a "Memorandum Agreement No. 6", dated January 4, 1940, between the parties of the effective agreement provided for the posting of seniority rosters as soon as possible after January 1940, for a period of sixty (60) days for any claims for errors

in seniority dates, after which period if no claims were filed, the posted dates would be regarded as correct.

A bulletin was posted on all the Carrier's shop bulletin boards dated January 10, 1940, with the rosters, advising in part:

"After sixty (60) days from date of roster, the seniority roster will not be open to further question, exception for correction of possible errors in printing, and dates appearing thereon will be accepted and recognized as correct."

The claimant in this dispute filed no claim that his date was incorrect within the sixty (60) day period—therefore his posted date on the roster was regarded as being correct.

The claimant's submission indicates that in 1947, and again in 1949 when he was furloughed, he started the handling of his case and in each instance he was called back to work and he dropped the handling of the issue.

The August 21, 1954 Agreement, Article 5, Section 1(A), (B), and (C) and Section 2 of said agreement established time limits for the handling of all unsettled claims or grievances pending on the property. This dispute was not handled timely pursuant to said rule and, therefore, is barred.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 24th day of October 1960.