

Award No. 3958

Docket No. 4030-I

2-RDG-I-'62

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

CHARLES OLDT, ACETYLENE GENERATOR OPERATOR

READING COMPANY

DISPUTE: CLAIM OF EMPLOYEE: 1. That under the current rules and agreement, particularly Rule No. 16, Charles Oldt, Acetylene Generator Operator was improperly denied his seniority rights when the Carrier and Union changed his seniority date on the Fireman and Oilers seniority roster.

2. That accordingly the Carrier and Union be ordered to restore the seniority roster as it was January 1, 1957.

EMPLOYEES' STATEMENT OF FACTS: I started working for the Reading Co. July 5, 1941, was promoted to helper, then to advanced helper, at which time I was called into the Armed Service. Upon my return from the Armed Service, I started as an advanced helper. Reduction in forces occurred and I was put back helper. Since 1947, regardless of my position of employment, I was assistant Acetylene Generator Operator. I operated the Acetylene Plant when the regular attendant was on vacation or on sick leave. March of 1950, the regular attendant became sick and died. His position was advertised, and I was the only successful applicant, and was awarded the position of Acetylene Generator Operator, May 1, 1950. My seniority date July 5, 1941 remained on the fireman and oilers' roster.

The only reason the roster was changed after all these years is: I was furloughed June 27, 1958. I exercised my seniority rights as per Rule No. 26 by claiming a junior employee who happens to be John Ebert, Locomotive Crane Operator, and local chairman of the fireman and oilers union. Mr. Ebert said I do not belong on the roster where I was, because an error was made in transcribing. Mr. Ebert is out of order due to the fact that the roster is corrected annually for any error that may occur, and that no error can go from July 5, 1951 to June 27, 1958 without being detected.

This case was handled with the carrier officers designated to handle such matters, who all declined to adjust the dispute, and with the union officers, who also declined to adjust the dispute.

POSITION OF EMPLOYEE: I still insist that I have had unfair treatment on the application of my seniority and am basing my argument on the last paragraph of Rule No. 16, which states: "Seniority dates shall be considered

appeal must be in writing and must be taken within 60 days from receipt of notice of disallowance, and the representative of the Carrier shall be notified in writing within that time of the rejection of his decision."

Carrier's records indicate that claimant did not properly file a grievance in writing with the officer of carrier authorized to receive same, nor was there any appeal in writing to designated officers of carrier in the appeal channels established by agreement and practice on this property. While claimant may well have discussed his grievance with various supervisors in the motive power department, carrier has nothing in its records which would indicate that he has complied with the mandatory provisions of the above quoted rule; carrier maintains, therefore, that his claim should be denied in its entirety.

II. The Carrier and the Firemen and Oilers Organization are in accord that the handling of claimant's seniority was proper, and in accord with existing rules and interpretations, thereto, in effect between the parties.

By Memorandum of Agreement effective November 15, 1943, between System Federation No. 109, the firemen and oilers organization and the carrier dealing with the advancement of shop employees, it was agreed, in part, that laborers accepting advanced positions under the shop craft agreement would retain their seniority as laborers at the point from which they were advanced. This agreement and understanding was abrogated under terms of letter agreement with the firemen and oilers organization dated August 25, 1949. The 36-month provision in the letter agreement of August 25, 1949 was designed to protect firemen and oilers seniority of employees promoted under the November 15, 1943 agreement until September 1, 1952, after which date Rule 38 of the firemen and oilers schedule agreement became applicable. In the handling of claimant's seniority dating on the property, carrier and union are in accord that retention of claimant's seniority date of July 5, 1941 was improper under existing facts and rules and necessary correction was made in accordance with Rule 16 of the schedule agreement. Since the parties to the contract are in accord with the application of the contract to the facts in Mr. Oldt's case, carrier maintains that the Board should deny the claimant's request for a change in his seniority dating in its entirety.

Under all the facts and circumstances present in this docket, carrier respectfully submits that the Board should not take jurisdiction of this claim but should dismiss same inasmuch as it has not been handled in accordance with the mandatory provisions of the Railway Labor Act. Should the Board take jurisdiction, and without waiving its position as to jurisdiction, carrier maintains that the claim should be denied because, first, claimant has not complied with the provisions of Article V of the August 21, 1954 National Agreement, and second, there has been no violation of any rules in the collective bargaining agreement in effect between the carrier and the firemen and oilers organization.

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 Railway Labor Act under Section 3 First (i), requires grievances—

“... shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes * * * .”

The instant dispute, not having been so handled, must be dismissed.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1962.