

The Second Division consisted of the regular members and in addition Referee Robert A. Franden when award was rendered.

Parties to Dispute: { System Federation No. 91, Railway Employees'
 { Department, A. F. of L. - C. I. O.
 { (Firemen & Oilers)
 { Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

- (a) That under the current Agreement, Truck Drivers N. L. Talley, W. H. Hall, J. Flemming and G. Moore, Radnor Shops, Nashville, Tennessee, were unjustly denied the right to establish Class "A" Seniority in the Truck Drivers classification by the Louisville & Nashville Railroad.
- (b) That accordingly, the Carrier be ordered to establish such Class "A" Seniority for said employees retroactive to November 1, 1971.

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 employees 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.

Parties to said dispute waived right of appearance at hearing thereon.

This is a claim requesting this Board to order the establishment of a Class "A" seniority roster for certain of the Carrier's employees at Radnor Shops, Nashville, Tennessee.

At Radnor Shops the named claimants perform certain fuel truck driving on a daily basis. It is the position of the organization the failure of the Carrier to establish a Class "A" roster deprives the claimants of their seniority rights under Scope Rule 1 and Rule 29 which read as follows:

"Rule 1
Scope

These rules govern the hours of service and working conditions of the classes of employees shown below, working in and about shops, power plants, train yards and engine terminals:

"A

Chief Engineers.
Stationary Engineers (Steam) including those who act jointly
as engineers and firemen in the same plant.
Stationary Firemen and Helpers.
Boiler Tenders (South Louisville Shops).
Power House Oilers and Helpers (South Louisville Shops).
Transfer Table Operators.
Fire Chiefs (South Louisville Shops).
Coal Hoist Engineers.
Labor Foremen.
Tractor Operators - Motorcycle Operators, Choreboy Operators.
Acetylene Gas Generator Operators.
Operators of Floor Sweepers.
Truck Drivers. (Emphasis supplied)

B

Sand House Men.
Turntable Operators.
Engine Washers.
Engine Wipers.
Tool and Can Men (including those engaged in handling supplies
to and from locomotives).
Inside Hostler Helpers.
Power Plant Laborers.
Roundhouse Laborers.
Car Yard Laborers (Mechanical).
Shop Laborers.
Fueling Station Laborers.
Freight Car Cleaners at Shop Locations.

NOTE: Chief Engineers, Fire Chiefs, and Labor Foremen are appointive positions. Such appointments will be made from employees covered by this agreement when qualified men are available."

Class "A" Seniority is specifically provided for in Rule 29 of the Firemen and Oilers' Agreement.

Rule 29 states in pertinent part:

"Rule 29
SENIORITY DATING

Seniority of each employe, Groups A and B, covered by this Agreement, will begin from the date and time the employe starts to work.

29(a) Employees in Group 'A' of Rule 1 will hold seniority only in the respective classifications in which they have established

"seniority, except as provided in Section (c), and will stand for promotion from one classification to another in accordance with fitness, ability and seniority.

NOTE: An employe covered by the Firemen & Oilers Agreement may establish seniority in any of the classifications covered in Group 'A' of Scope Rule 1; however, once established such seniority must be protected in order to be retained. In other words, any time an employe's seniority entitles him to a regular position in a particular classification covered in Group 'A', he is obligated to exercise that seniority or forfeit his right to such.

29(b) Employees in Group 'B' of Rule 1 will hold common seniority in all classifications shown therein, except the departments of South Louisville Shops will be grouped and handled as has been the practice herebefore as follows:

Seniority District--South Louisville Shops Departmental seniority shall govern at South Louisville Shops as follows:

Machine Department (including Machine and Erecting Shops, Locomotive Air Brake Shop, Locomotive Tender Shop);
Wheel & Axle Shop #8; Diesel Shops.

Pipe Tin and Copper Department (including Passenger Car Plumbing Shop, Pipe Tin and Copper Shops, Grease Plant).

Chemical Laboratory.

Electrical Department (including Electric Shop, Battery Shop).

Freight Car Department (including Wood Car Repair Shop, No. 13, Steel Plant, No. 14, Rip Track, Waste Reclamation Plant.)

Passenger Car Department (including Planing Mill, Cabinet Shop, Upholstery Shop, Plating Room, Truck (passenger) Shop, Coach Department).

Paint Department (including Coach, Locomotive and Freight Car Paint Shops, and Paint Mixing Department).

Boiler Department.

Blacksmith Department.

Power Plant.

"29(c) Employees advanced from Group 'B' to Group 'A' will rank in the group to which advanced from the date of change, but will retain their seniority in Group 'B' and may exercise displacement rights therein.

29(d) Employees in Group 'B' will not establish seniority in Group 'A' while protecting temporary vacancies in the latter group."

Note that it is the Truck Driver classification in Class "A" to which the claimants believe they are entitled.

We are unable to find any basis in the agreement to support the organization claim that the establishment of a Class "A" roster is a matter of right. There has been cited no rule or language in the agreement from which we can imply that the failure of Carrier to establish said roster violates the agreement.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

○ Attest: Executive Secretary
National Railroad Adjustment Board

By: Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 15th day of November, 1973.

CARRIER MEMBERS' RESPONSE TO LABOR MEMBERS' DISSENT
TO
AWARD NO. 6597, (DOCKET NO. 6390)

What is being fobbed off as a dissent is an obvious effort to raise issues not previously thought of or considered by the dissenters themselves, and an apparent effort to confuse, otherwise it would be given the eloquent silent treatment that such diatribes usually deserve.

It is well settled that the only disputes properly referable to this Board are disputes handled in the usual manner on the property in accordance with the requirements of Section 3 First (i) of the Railway Labor Act, and that the claim denied by the Chief Operating Officer, on the property, is the claim which "may be referred" to this Board. (Third Division Award No. 13235).

If the dissenters had taken the time to peruse the record covering the dispute as handled on the property, as evidenced by Petitioners' Exhibits, they would have seen that the request of the Organization was to "establish a Class 'A' seniority roster". (Organization's Exhibits "A:", "C", "E", "G" and "I"). In its submission to the Board the Organization stated:

"This dispute has been handled with all officers of the Carrier designated to handle disputes, including the highest designated officer of the Carrier, all of whom have declined to make a satisfactory adjustment."

Award No. 6597 is in direct response to the dispute between the parties. If the claim before the Board was not the dispute as handled on the property, as now indicated by the dissenters, then it should properly have been dismissed and no doubt would have been dismissed if the dissenters had attempted to make the distinction which they now, in their Monday morning quarterbacking, consider of primary importance.

The dissent does not change the record upon which the award was based, nor does it detract from the Award.

P. L. Carter

W. B. Jones

H. F. M. Brailwood

E. T. Horsley

A. M. Jenkins

SECOND DIVISION

LABOR MEMBERS' DISSENT TO AWARD NO. 6597
(DOCKET No. 6390)

*Noted
Jury
11/2/50*

The majority in their findings are grievously in error and totally unresponsive to the dispute and claim of the Employees as properly before this Division of the National Railroad Adjustment Board, reading:

"Dispute: Claim of Employees:

- (a) That under the current Agreement, Truck Drivers N.L. Talley, W. H. Hall, J. Flemming and G. Moore, Radnor Shops, Nashville, Tennessee, were unjustly denied the right to establish Class 'A' Seniority in the Truck Drivers classification by the Louisville & Nashville Railroad.
- (b) That accordingly, the Carrier be ordered to establish such Class 'A' Seniority for said employees retroactive to November 1, 1971. (Emphasis added)

From the above quoted dispute and claim of the Employees, it becomes immediately obvious that the remedy sought was the establishment of "...Class 'A' seniority in the Truck Drivers Classification...".

Nowhere in the dispute and claim is there any demand for a seniority roster as such.

Notwithstanding such explicit stipulation, the majority states in the first paragraph of their findings following the four standard paragraphs, and we quote:

"This is a claim requesting this Board to order the establishment of a Class 'A' seniority roster..." (Emphasis added)

Further in their findings on page 4 of the Award, the majority goes on to say, and we quote:

"Note that it is the Truck Driver Classification in Class 'A' to which the claimants believe they are entitled."

and then finally:

"We are unable to find any basis in the agreement to support the organization's claim that the establishment of a Class 'A' roster is a matter of right. There has been cited no rule or language in the agreement from which we can imply that the failure

"of Carrier to establish said roster violates the agreement."
(Emphasis added)

Thus it becomes apparent that the majority in arriving at their findings were basing their conclusions on the false premise that the issue in point was the establishment of a "Class 'A' Roster" instead of the claim before the Board; the establishment of "Class 'A' seniority" as specifically set forth in the Dispute and Claim reading:

"...The Carrier be ordered to establish such Class 'A' seniority for said employees..."

The whole issue pivots on the question of "Class 'A' seniority" and not on the matter of a "Class 'A' seniority roster" on which the majority base their findings.

It is an indisputable fact that the claim before the Board was the establishment of, "Class 'A' seniority in the Truck Drivers Classification", and that it was a proper claim properly before the Board.

Had the majority treated with the issue before them, "Seniority", as submitted by the Employees, rather than the grossly unrelated issue of a "roster", they would have found an abundance of agreement support in the Organization's claim that the establishment of "Class 'A' seniority" is a matter of right.

The Employees have cited Rule 1 Scope and Rule 29, "Seniority Dating", in support of their claim. Admittedly neither Rule 1 or Rule 29 makes mention of a "roster", but more to the point, neither does the Employees' claim.

The majority quotes both rules in their entirety as lifted from the controlling agreement and the Employees' original submission, particularly noting, and this is the majority's language:

"Class 'A' seniority is specifically provided for in Rule 29 of the Firemen and Oilers' Agreement."

and then goes on to completely ignore its salient provisions.

Rule 29 is clear and unambiguous in how an employee's seniority

in Class "A" will be established. Rule 29 reads, "Seniority of each employee, Groups 'A' and 'B' covered by this Agreement will begin from the date and time the employee starts to work". (Emphasis added)

The only exception to be found in Rule 29, as to the establishment of Seniority in Group "A" is to be found in paragraph (d) which provides that:

"Employees in Group 'B' will not establish seniority in Group 'A' while protecting temporary vacancies in the latter Group."
(Emphasis added)

It is a long established policy of the Board that where exception is stated, others will not be implied.

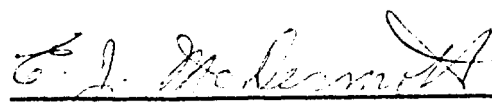
The Claimants in this dispute are Truck Drivers for the purposes of Scope Rule 1. They hold regular Truck Drivers assignments and are paid the applicable Truck Driver's rate of pay for their entire tour of duty. There is no dispute that the Claimants have long since begun work as Truck Drivers in Group "A".

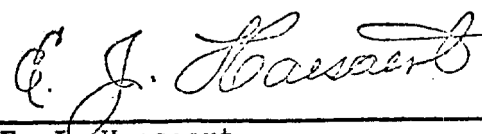
Keeping in mind that the Employees' Claim is for Class "A" seniority and not a roster, as clearly set forth in the Employees' claim, it becomes obvious that Rules 1 and 29 do provide the basis and abundantly support the Organization's claim for the establishment of Class "A" seniority in the Truck Drivers Classification.

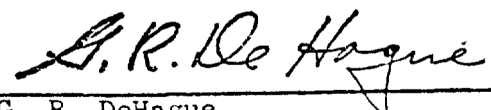
It is abundantly clear that the majority in denying the Employees' claim have found in an issue not before the Board. It is, therefore, patently obvious that the findings are not responsive to the Employees' claim and accordingly, Award No. 6597 must be held to be palpably erroneous.


D. S. Anderson


W. O. Hearn


E. J. McDermott


E. J. Haesaert


G. R. DeHague