

The Second Division consisted of the regular members and in addition Referee Nicholas H. Zumas 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:

1. That under the current agreement, Truck Driver C. E. Tolliver was unjustly and erroneously denied and deprived of his proper Group "A" Seniority in the "Truck Drivers" classification.
2. That accordingly, the Carrier be ordered to accord Truck Driver C. E. Tolliver Group "A" Seniority in the "Truck Drivers" classification, effective as of January 1, 1974.
3. That the Carrier be further ordered to compile and post for the Evansville, Howell Shops Seniority District, a corrected Seniority Roster showing Truck Driver C. E. Tolliver with his proper Group "A" seniority date in the Truck Drivers classification beginning January 1, 1974.

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.

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

Claimant is an employe at Carrier's shops at Howell, Indiana. He entered Carrier's service as a Laborer in 1944 and thereby established seniority in Class "B" of the Scope Rule (Rule 1).

In February 1968 the parties entered into a Memorandum of Agreement (effective March 1, 1968) that established, among other things, a classification of "Truck Driver" in Class "A" of the Scope Rule.

By Bulletin No. 123 dated July 19, 1972, Carrier advertised a position of Truck Driver. By subsequent bulletin, the position of Truck Driver was awarded to Claimant on July 28, 1972.

On January 21, 1974 the General Chairman notified the General Foreman that even though Claimant had been awarded the position of Truck Driver he had not been given Class "A" seniority, and requested that such be effected. Carrier's Master Mechanic agreed, and, on January 25, 1974, established a Class "A" seniority roster and showed Claimant's name thereon with a classification of "Truck Driver."

Soon thereafter Carrier notified the General Chairman that the Master Mechanic erroneously established the Class "A" seniority roster and that Claimant was being taken off the Class "A" roster.

Claim was filed on behalf of Claimant alleging that Carrier violated the Agreement by depriving Claimant of his Class "A" seniority in the "Truck Driver" classification, and asks this Board to require Carrier to compile a Class "A" seniority roster showing Claimant with a "Truck Driver" classification.

In addition to the Scope Rule (showing that a "Truck Driver" is a Class "A" classification), the Organization relies on Rule 29 and Rule 9 of the Agreement between the parties.

Rule 29 (Seniority Dating) provides:

"Seniority of each employee, Groups A and B, covered by this Agreement, will begin from the date and time the employee 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 employee 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 employee'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 rights 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 heretofore ---.

"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."

Rule 9 (Seniority Rosters) provides:

"(a) Seniority rosters of employees will be compiled by seniority districts and will show the employee's dating in each rank to which he is entitled.

(b) Copies of rosters as soon as compiled, will be posted on bulletin boards at roundhouses, shops, and outlying points, and will be furnished to the Local Chairmen and General Chairman. Rosters will be revised in January of each year. They will be open to protest and correction, upon proper proof of error, for a period of sixty days from date posted, which shall be shown thereon. After such period and correction, the dating on the roster shall stand and govern for the period. Any dating which remains unchanged after two years shall not be open to question thereafter."

Carrier's argument against the claim may be summarized as follows:

1. The issue in this dispute has been resolved in Carrier's favor by Second Division Award No. 6597 between the same parties (at a different location), and unless the Board rules that Award No. 6597 was palpably erroneous the claim must be denied.

2. Rule 29 is not a mandatory rule enforceable by this Board, but rather is a rule to be negotiated between the parties.

3. Rule 9 cited by the Organization deals "strictly with seniority rosters being brought up-to-date" and has nothing to do with establishing new rosters. (Carrier's letter of April 5, 1974 to the General Chairman.)

Award No. 6597 involved the same parties, and the Board had before it virtually the same issue. There the Board held:

"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 rights. 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."

Normally this Board would be inclined not to disturb prior awards involving the same parties and the same issue. However, an examination of the submissions presented to the Board in Docket No. 6390 (resulting in Award No. 6597) reveals that there was no mention or reference to Rule 9 (Seniority Roster).

It appears that through inadvertence, Rule 9 was omitted in the Fourth Edition of the Firemen & Oilers' Agreement, and was not therefore before the Board during its consideration of the merits of the dispute resulting in Award No. 6597.

By letter dated March 29, 1973 Carrier wrote to the General Chairman, in part, as follows:

"We have not found any record to indicate it was agreed to omit the seniority rule when the Fourth Edition was printed, and it is therefore only natural to assume that the rule was omitted through oversight.

We are agreeable, as suggested in your letter, to correcting the mistake by a letter of understanding. If you therefore sign and return one copy of this letter for the completion of our files, we will consider the former Rule 9 as now being a part of the Fourth Edition of the Agreement."

Under these circumstances, therefore, the Board finds that Award No. 6597 has no precedential value.

Rule 9 requires that seniority rosters be compiled. It is not restricted, as Carrier suggests in one of its letters,* to up-dating existing seniority rosters.

Construing Rule 9 with Rule 29, the Board concludes that Carrier is required to give Claimant Class "A" status in the "Truck Driver" classification, and to compile and publish a corrected seniority roster showing Claimant with his proper Class "A" seniority date.

While Rule 29 is permissive in the sense that an employee "may" establish seniority in any of the classifications of Class "A", he has exercised the right to do so where, as here, he was the successful bidder to a bulletined position advertised by Carrier that came within Class "A".

A contrary holding would render Rule 9 and Rule 29 meaningless.

*/ It is interesting to note that this is the only reference that Carrier makes in the entire record. No discussion of Rule 9 was presented in Carrier's ex parte submission, and its rebuttal was similarly silent even though the Organization relied heavily on Rule 9 in its ex parte submission.

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Award No. 6930
Docket No. 6760
2-L&N-FO-'75

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch /es
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of September, 1975.