

The Second Division consisted of the regular members and in addition Referee Walter C. Wallace when award was rendered.

Parties to Dispute: (System Federation No. 99, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(Illinois Central Gulf Railroad Company

Dispute: Claim of Employees:

1. Carman Helper J. B. Mitchell's name was removed from the seniority roster on May 22, 1969, thereby depriving him of his right to be restored to service on June 3, 1974, in the restoration of forces, in violation of Rule 28 of the current Agreement.
2. That accordingly the Illinois Central Gulf Railroad be ordered to compensate Carman Helper J. B. Mitchell for eight (8) hours at Carman's rate of pay beginning June 3, 1974, and continuing until J. B. Mitchell is restored to service, any and all overtime he would have received, plus interest at the existing rate, his vacation rights; and all other benefits he is being deprived of while being held out of service, including his seniority rights.

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.

The claim herein arose because of claimant not being restored to service in the restoration of forces on June 3, 1974.

The Carrier contends that claimant's name was removed from the seniority roster in 1969; that there was no protest concerning the removal of his name from the seniority roster, and that, therefore, he had no recall rights when forces were increased on June 3, 1974. The Carrier also contends that the claim before the Board is barred by the applicable time limit rules.

So far as the time limit issue is concerned, we must reject the contention of the Carrier. The action complained of was failure to recall claimant to the service in the restoration of forces on June 3, 1974. The claim was initiated within sixty days from that date. It has been held that unless a statute of limitations or an agreement of that character specifically provides otherwise, the period of limitation begins to run at the time when a complete cause or right of action accrues or arises. See Fourth Division Award No. 943, and Third Division Award No. 14083. We find, therefore, that the claim before the Board is not barred.

The reason that the Carrier gives for not recalling claimant in the restoration of forces in June, 1974, was the removal of claimant's name from the seniority roster in 1969. We have reviewed the record in this respect. It shows that claimant was absent from work because of alleged illness during most of the month of April 1969. He was instructed at that time to secure a doctor's release prior to returning to work. The record does not show that such a release was furnished by the claimant and on May 22, 1969, his name was removed from the seniority roster. The record does not show that claimant was afforded an investigation under Rule 39, or that he was notified of the removal of his name from the seniority roster.

It has often been held that seniority rights are valuable rights and cannot be taken away unless the schedule rules and the evidence warrant such action beyond question. See First Division Awards Nos. 11282, 19399, and Third Division Award No. 11255. Adherence to this doctrine forces us to the conclusion that claimant's name was improperly removed from the seniority roster in May, 1969, in the manner that it was. To say the least, claimant was entitled to notice of such action.

As claimant's absence in April, 1969, was due to alleged illness, and there is nothing in the record to show that his condition has changed or that he is now, or was in June, 1974, physically able to perform the work of Carman helper, we cannot sustain Part 2 of the claim for compensation beginning June 3, 1974. We will award that claimant be restored to the seniority that he held prior to May 22, 1969, with the right to return to service in line with that seniority provided that he can pass satisfactory physical examination that may be required by the Carrier. In all other respects the claim will be denied.

A W A R D

Claim sustained to the extent indicated in the Findings.

Form 1
Page 3

Award No. 6979
Docket No. 6883
2-ICG-CM-'76

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 9th day of January, 1976.