

The Second Division consisted of the regular members and in addition Referee Herbert L. Marx, Jr. when award was rendered.

Parties to Dispute: (System Federation No. 100, Railway Employees'
(Department, A.F. of L. - C. I. O.
((Carmen)
(
(Lehigh Valley Railroad Company

Dispute: Claim of Employees:

That Carman Sterling McFarland was unjustly dealt with when he was withheld from employment at Allentown, Pa. after July 2, 1974.

That accordingly Carman Sterling McFarland be put in the proper seniority order on the Lehigh Valley Railroad Common Roster, Allentown, Pa.

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, a former employe of the Central Railroad Company of New Jersey, was called for possible employment with the Lehigh Valley Railroad Company, successor of the CNJ. He was given a physical examination on June 14, 1974, and was notified on July 2, 1974 that he did not pass the examination. At a later date, October 14, 1974, he was permitted to start work and his seniority commenced at this point.

Claimant has no grounds for stating he "was unjustly dealt with" from July 2, 1974, on. Not being an employe of the Carrier, he has no protection under the collective bargaining agreement between the Carrier and the Organization. His employment relationship with the Lehigh Valley Railroad did not commence until October 14, 1974. No claim is made that the Carrier was required to employ anyone failing to meet its physical requirements.

The further argument is made that, upon employment, claimant was entitled to a higher seniority standing because of a Memorandum of Agreement dated November 1, 1972, between the Carrier and the Organization. The Memorandum of Agreement reads in part:

"It is agreed that the former Central Railroad Company of New Jersey Carmen employed by the Lehigh Valley Railroad Company will be placed on the Common Seniority Roster of the Carmen Craft as of April 1, 1972, on the basis of their chronological standing on the Zone 2, Central Railroad Company of New Jersey Carmen's Seniority Roster."

Effectuation of this agreement shows unquestionably that (a) it applied only to those CNJ employees employed by the Lehigh Valley on April 1, 1972 (the present claimant not being included therein and making no claim that he should have been), and (b) it did not grant any seniority for service time prior to actual employment by the Lehigh Valley. It simply fixed an order of seniority for those simultaneously employed by the Lehigh Valley.

As a remedy, claimant would have the Carrier credit him for service not performed. The November 1, 1972, Memorandum of Agreement neither covers him, nor, in any case, provides for seniority credit for time prior to actual employment.

A W A R D

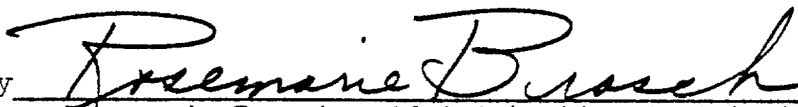
Claim No. 1 is dismissed.

Claim No. 2 is denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 1st day of November, 1977.