

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

Parties to Dispute: (System Federation No. 8, Railway Employees'
(Department, A. F. of L. - C. I.O.
((Carmen)
(
(Missouri-Kansas-Texas Railroad Company

Dispute: Claim of Employees:

1. That under the current Agreement Carman J. L. Bridges was unjustly dealt with when Carman R. J. Crunk was placed on the seniority roster by the Carrier senior to him.
2. That accordingly the Missouri-Kansas-Texas Railroad Company at Bellmead, Texas, be ordered to place J. L. Bridges on seniority roster senior to R. J. Crunk.

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.

This Board finds that the request of Petitioner to revise the seniority roster to show a seniority date of July 31, 1969, in the Carman's classification for a one R. J. Crunk, Bellmead Car Department, Waco, Texas, has not been timely made under Rule 23 of the Agreement.

The applicable and controlling part of Rule 23, Seniority, reads as follows:

"The seniority lists will be prepared from the Company's record as of January 1st of each year for each craft and subdivision thereof and will be posted and open for protest for a period of sixty (60) days after the posting of each roster. Committees will be furnished with copies."

The record before us shows that seniority rosters for the Bellmead Car Department, Waco, Texas, have listed R. J. Crunk with seniority date of July 26, 1969, as Carman on each seniority roster published on January 1st, for the years 1971, 1972, 1973, 1974, 1975 and 1976.

Petitioner alleges that its protest dated February 2, 1976, is a timely protest of the January 1, 1976 seniority roster showing a seniority date of July 26, 1969, as Carman for R. J. Crunk. However, we do not agree. Article 23 provides the seniority lists will be prepared as of January 1st each year for each Craft, and will be posted and open for protest for a period of 60 days after the posting of each roster, otherwise it will become permanent.

Rule 23, it may be noted, provides that the list will be revised each year and that, if not protested in 60 days, it shall be deemed permanent. This surface contradiction, providing for flexibility and rigidity at one and the same time, can be resolved and harmonized if we bear in mind the objectives of the parties. The seniority roster is compiled to have an unimpeachable source of authority upon which to base decisions in which seniority may be involved. This authority must be established in advance if quarreling and bickering over relative standing is to be avoided at the time it is called into use. The parties had two major concerns in the establishment of the roster. First, there had to be recognition that the composition of any work force varies from time to time as old employees drop out or transfer to other jobs and as new employees are added. Management must make periodic revisions if the list is to reflect these inevitable changes. The parties must also have foreseen that in making revisions there would always be the possibility of error. This possibility was their second concern. It was solved by giving the employees a limited time in which to call attention to an error and have it corrected. Thus the needs of Management to revise and the employees to correct having been provided for, and both having been exercised, the list was then to become permanent.

The permanency contemplated by the parties could not mean that Management might not thereafter revise it, for this would be a direct contradiction of the provision calling for yearly revision. It was to be, however, permanent in other respects, and it precludes the right of an employee to enter a protest once the initial time limit of 60 days has elapsed.

Sixty days after it has been established, lacking a protest, the seniority roster becomes permanent and unchallengeable in the future, except that Management may revise it in January of each year. Thereafter, employees may challenge the list only insofar as the revision constitutes a change from the year before and this challenge must be made within the allotted 60 days by the employees aggrieved or the right to do so is forever lost. (See Third Division Award No. 12297; Second Division Award No. 1958; and First Division Award No. 12 782).

Form 1
Page 3

Award No. 7414
Docket No. 7349
2-MKT-CM-'77

Therefore, we are barred by the foregoing from considering the case on its merits.

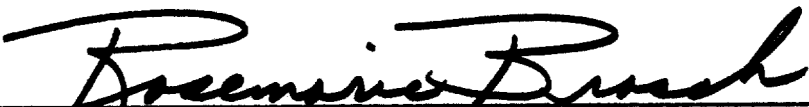
A W A R D

Claim dismissed.

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 2nd day of December, 1977.

