

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: (Charles Carman
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(Burlington Northern Inc.

Dispute: Claim of Employees:

The Burlington Northern, Inc., while stating it has "no opposition" thereto, wrongfully refuses to grant to Mr. Charles Carman a seniority date of May 20, 1974 and has given Mr. Carman a seniority date of December 2, 1974 instead.

Accordingly, the Burlington Northern, Inc. should be ordered to make Charles Carman whole by granting him a seniority date of May 20, 1974 with all rights and privileges attendant thereto.

Findings:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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 Claimant, Mr. Charles Carman, applied for employment with the Carrier as a general laborer in April, 1974. In May, 1974, as a result of a physical examination conducted by the Carrier's medical personnel, he was told that his back X-rays showed that he was not suitable for work and that he would not be hired. On September 21, 1974, Mr. Carman filed a complaint with the Washington State Human Rights Commission alleging unfair discrimination in employment, because of disability, citing the Washington State Law Against Discrimination, Chapter 49.60 RCW. The Claimant was hired as a general laborer starting December 2, 1974. The Commission, Mr. Carman and the Carrier signed a Pre-Finding Settlement agreement on April 14, 1975. These parties agreed in the Pre-Finding Settlement that:

"this agreement shall constitute neither an admission nor an adjudication by either signatory party that an unfair practice of discrimination has or has not been committed...."

The Carrier agreed to pay: "full retroactive wages lost by Complainant between May 20, 1974 and December 2, 1974," less outside earnings for the period and normal withholding items. The parties specifically addressed the matter of seniority in the Pre-Finding Settlement, and Mr. Carman did not achieve a seniority date of May 20, 1974, but rather it was understood that Mr. Carman could seek the May 20, 1974 date by proceeding against the Union. The Carrier agreed to accept the May 20, 1974 seniority date if Mr. Carman was successful in receiving an award of that seniority date, by agreement, settlement or judgement from the Union. The Union has declined to agree to the May 20, 1974 date, believing that such would violate Rule 24 (d) of the Agreement, and would alter and damage the attendant seniority and service rights of more than sixty Carrier employees holding Firemen and Oiler Seniority on the Pacific District.

Contrary to the Claimant's contentions concerning "equity relief" and decisions of the United States Supreme Court relating to the Civil Rights Act, the sole question properly before this Board is the question of the Claimant's proper seniority date under the Agreement of the parties. This Board's jurisdiction under Section 3, First (i) of the Railway Labor Act is limited to interpreting or applying agreements between carriers and their employees.

Rule 24(d) of the Agreement states:

"New employees shall not establish seniority until they have been in service sixty (60) days. After seniority has been established under this rule, it shall be as of the date pay started."

We find that under Rule 24 (d) a new employee must actually be in service for sixty days in order to first establish seniority, and once seniority is thereby established, it is retroactive 60 days to the date that service and pay for that particular service started.

A W A R D

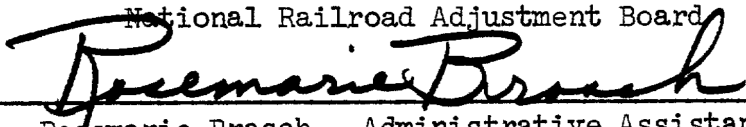
Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary

National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 6th day of January, 1978.