

The Second Division consisted of the regular members and in addition Referee George E. Larney when award was rendered.

Parties to Dispute: { System Federation No. 4, Railway Employees'
Department, A. F. of L. - C. I. O.
(Carmen)
{ Seaboard Coast Line Railroad Company

Dispute: Claim of Employees:

1. That the Seaboard Coast Line Railroad Company violated terms of the controlling agreement when they granted Mr. W. F. Parker retroactive seniority on the Tampa, Florida Carmen's seniority roster.
2. That the Seaboard Coast Line Railroad Company be ordered to recompute Mr. W. F. Parker's Carman seniority on an actual service with the Carrier basis.

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.

The issue before the Board concerns Claimant W. F. Parker's proper date of seniority. The central question to be addressed is whether the Claimant was entitled to a retroactive seniority date based on a credit for military service.

The Carrier takes the position that Claimant was entitled to and accordingly received a retroactive seniority date based upon the Federal Statute, Veterans Reemployment Rights Act, 38 U.S.C. Section 2021 et. seq. (formerly 50 U.S.C. App. Section 459).

The Organization takes the position that Claimant was not entitled to and therefore wrongfully received a retroactive seniority date in violation of Rules 15(f) and 17 of the Controlling Agreement, effective January 1, 1968 as subsequently amended. These Rules are stated in full as follows:

"Rule 15(f). Acceptance of work at other shop points or at the same point where more than one roster is maintained between the time of layoff and being called back into the service at home seniority point, will not impair an employee's seniority standing. If an employee makes the transfer permanent he will be dated as a new man from the day he started to work at the new seniority point of employment."

"Rule 17. Employees transferred from one point to another with a view of accepting a permanent transfer, will, after thirty (30) days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employees will not be compelled to accept a permanent transfer to another point."

The pertinent facts in this case are undisputed. Claimant was first employed by Carrier on May 12, 1969 as a Carman Apprentice in Lakeland, Florida. On February 19, 1970, Claimant was granted a leave of absence to enter military service. Nearly two (2) years later, on January 12, 1972, Claimant was honorably discharged from military service. Claimant then returned to the employ of the Carrier on January 25, 1972 as a Carman Apprentice at Lakeland, Florida. On July 25, 1973, Claimant voluntarily requested a transfer to Tampa, Florida. Claimant was transferred to Tampa on August 6, 1973 and completed his apprenticeship on October 30, 1976. Upon completion of his apprenticeship, the Carrier, in computing Claimant's seniority date, credited the time he had served in the military and assigned the Claimant a seniority date at the Tampa location of November 22, 1974.

The Board finds that Rules 15(f) and 17 of the Controlling Agreement provides for a Point Seniority System whereby an employee has seniority at one location (point); and that when an employee voluntarily requests a permanent transfer from one point to another, said employee loses all claim to any seniority date established at the former point.

The Carrier based its action of granting Claimant a retroactive seniority date while employed at the Tampa location on having to comply with the Veterans Reemployment Rights Act. However, the Board believes based on the following interpretation of the Act rendered by the Office of Veterans' Reemployment Rights, United States Department of Labor, the Carrier mistakenly applied the military service credit in the instant case:

"The Veterans' Reemployment Rights Statute does not set up an independent seniority system or an independent system of industrial jurisprudence, but it operates within or subject to any existing system that the parties have established. In Mr. Parker's (Claimant) case, it was determined that his claim under the Statute was not a valid one since his military service time had no bearing on his loss of seniority at Lakeland under the Point Seniority System."

The Board concludes that had Claimant completed his apprenticeship at Lakeland, he would have been entitled to a retroactive seniority date based upon his military service. Had Claimant then made a voluntary permanent transfer to Tampa, his seniority date at Tampa would have been his first day of work there. Had Claimant never served in the military, but completed his apprenticeship at Lakeland and voluntarily transferred to Tampa, the result would be identical in that his seniority date would have been the first day of his work as a carman there.

Thus, the Board can discern no reason why the Claimant should be able to gain a more favorable seniority date at Tampa because of his military service than he would have had, had he never served, but remained at Lakeland and completed his apprenticeship and then transferred to Tampa. To find otherwise, would in effect be granting Claimant super-seniority which clearly, under the applicable provisions of the Controlling Agreement he is not entitled to. The Board concludes therefore that Claimant forfeited his seniority rights at Lakeland when he voluntarily transferred to Tampa in 1973.

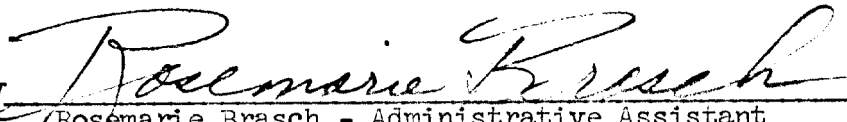
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Claimant's correct seniority date is determined by the Board to be October 30, 1976, the date he completed his apprenticeship at Tampa.

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 9th day of January 1980.