

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

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Soo Line Railroad Company

Dispute: Claim of Employes:

1. That under the current agreement, Rule 27, paragraph 4, of the Shop Crafts Agreement was violated, when Mr. Bruce Nelson, Shops Manager, Shoreham Shops, Minnesota, Soo Line Railroad Company and the Local Chairman Frank J. Kopp, Jr., agreed to place Carman G. Brynteson, a demoted Assistant Car Foreman on the 1983 roster with a dating of 6-1-80.

2. That accordingly, the Soo Line Railroad Company be ordered to apply a seniority dating of 10-22-82, when he was demoted from Foreman to a Carman position, due to the fact that Mr. G. Brynteson did not protest that he was not shown on the rosters with a journeyman Carman dating after two postings or two years.

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 employes 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.

On June 1, 1980, an Agreement was entered into between the Carrier and the Organization, described as an "Apprenticeship Agreement", under which all temporary or upgraded carmen with 6,240 hours or more worked as a Carman, were allowed a Journeyman Carman's seniority dating of June 1, 1980, and placed on the seniority roster in the order of the total number of hours worked as temporary Carmen.

The record shows that G. P. Brynteson was promoted to temporary Carman on June 20, 1973. He transferred to a temporary painter position in the Car Shop on May 30, 1974, and received his temporary Carman dating on July 28, 1975. He was appointed as Assistant Car Foreman on April 17, 1980. Prior to his promotion to Car Foreman, Brynteson had worked 7,111.5 hours as a temporary Carman. During 1980, 1981 and 1982, while working as a Foreman, Brynteson was listed as a temporary Carman, but was not listed on the Carman's

seniority roster. On October 22, 1982, he was demoted as Foreman and given a Carman's dating of October 22, 1982. It was subsequently noted that Brynteson's total hours as a temporary Carman exceeded the 6,240 hours specified in the Apprenticeship Agreement. Following a review by the Manager of Shops and the Local Chairman of the Organization, Brynteson was placed on the seniority roster with a Journeyman Carman dating of June 1, 1980.

The claim presented in behalf of Carman L. Meints alleges a violation of Seniority Rule 27, Paragraphs 1 and 4, which read:

"SENIORITY RULE 27 PARAGRAPHS 1 AND 4

"1. Mechanics, helpers and apprentices of each craft will be shown on their respective point, craft seniority list separately.

"4. In January of each year, seniority lists will be issued showing the individual's seniority standing of all those entitled to seniority in their respective crafts. Such seniority lists shall be posted and open for correction for a period of sixty (60) days from date of posting. All names and dates not protested for two (2) consecutive postings shall be considered as permanently established except that typographical errors may be corrected."

The contention is made that as no timely protests were filed by Brynteson when the 1980, 1981 and 1982 rosters were posted, on which his name was omitted, it was improper for him to be given a seniority dating of June 1, 1980, as agreed to by the Shop Manager and the Local Chairman.

This brings us to a review of the pertinent provisions of the June 1, 1980, Apprenticeship Agreement. Section 11 of that Agreement provides:

"11. All temporary carmen currently employed will have their service credited toward the time requirements of Article 2 so that no apprentice can rank ahead of these temporary carmen. Temporary carmen currently employed who have in excess of 6,240 hours service exclusive of overtime, will acquire a carman's seniority dating; their ranking on the roster will be determined by the amount of service rendered as a temporary carman."

Brynteson was clearly entitled to a seniority dating as Carman of June 1, 1980, under the Apprenticeship Agreement, and he was entitled to be placed on the seniority roster as of that date in the same relative position that he was placed in by agreement of the Manager of Shops and the Local Chairman.

It is generally recognized that seniority is a right granted or established by the Collective Bargaining Agreement. For example, in Third Division Award No. 16545, it was found that since the Claimant held no contractual right to the retention of seniority, it was not improper for the Carrier to remove Claimant's name from the Clerical Roster outside of the time limits specified by the Seniority Roster rule. In denying the claim, the Board stated:

"...Seniority rights, if any, are created by the employment Agreement. The seniority roster itself does not create nor confer seniority."

The provisions of Section 11 of the Apprenticeship Agreement are controlling. We agree with the reasoning of Third Division Award No. 16545, and applying the principle there enunciated to our present case, we find that the Carrier had an obligation to comply with the specific terms of Section 11 of the Apprenticeship Agreement, and to provide Brynteson with a proper seniority dating when the omission of his name from the roster was discovered. We again point out that during the seniority roster protest periods referred to, Brynteson was not working on a position covered by the applicable Agreement but was working in a Supervisory position.

Without passing upon the authority or responsibility of the Local Chairman in the matter, we find that seniority date of June 1, 1980 was proper for Brynteson. The claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 6th day of November 1985.