

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10736
Docket No. 10511
2-MP-CM-'86

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

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

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated the controlling agreement when they did not correctly establish seniority date of Carman R. K. Watkins of St. Louis, Missouri.
2. That the Missouri Pacific Railroad Company be ordered to recompute and establish correct seniority date of Carman R. K. Watkins.

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.

Essentially, this dispute focuses on whether: 1. Claimant has seniority rights from employment entry date which have not been adjusted on a proper basis: 2. The protest was timely filed under the Controlling Agreement.

As presented to the Board, the Claimant's position on the revised October 31, 1979 Seniority Roster has been properly determined and accurately reflects his seniority date.

Rule 24(c) of the Controlling Agreement provides two (2) months' time to file a timely protest to the Roster:

"(c) On or before January 1 of each year a list of employes' names which are to be added or dropped from the seniority roster will be posted as notice and for protest in places accessible to the employes in each seniority

district and shall remain posted until the last day of February of that year. The general and local chairmen shall be furnished with a copy of such notice and protest list and, upon presentation of proof of error during the period of posting, such error will be corrected before the revised roster for the calendar year is compiled and the additions or elimination shown on the corrected notice and protest list shall be considered permanent. The revised roster will be signed by the local chairman and the officer issuing the roster before posting and copies thereof furnished to the local and general chairmen."

The Claim in this case was not filed until February 14, 1983. The record shows that Claimant's seniority status has been fixed since October 4, 1979. The Board concludes that Claimant did not protest the Roster in a timely fashion within two months of the 1980 posting.

The Organization accuses the Carrier of failing to assert timeliness on the property subsequent to the Order of the U. S. District Court on December 23, 1981, and argues that the Claim should not be dismissed.


In the Board's opinion the burden of proof rests upon the Organization and no supportive evidence was presented to sustain that burden. Further, the National Railroad Adjustment Board is not charged with enforcing Court Orders.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 19th day of February 1986.