

The Second Division consisted of the regular members and in addition Referee Robert W. McAllister when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Chicago and North Western Transportation Company

Dispute: Claim of Employees:

1. Carman Brian Cron was deprived of his seniority when the Carrier called back from furlough carmen junior to him in seniority.

2. That the Chicago and North Western Transportation Company be ordered to compensate Carman Brian Cron for all wages Carman J. Austin has earned since April 11, 1983, plus all health and welfare benefits, and additionally, that all days Carman Austin worked be credited towards Claimant's carmen's card.

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 employees 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 7, 1983, this Claim was filed on behalf of Claimant, a Carman, asserting he should be compensated for all the wages Carman J. Austin has earned since April 11, 1983. It is alleged the Claimant was senior to Austin, and he, not Austin, should have been called back to work on April 11. The Organization also referred the Carrier to a prior January 26, 1983, claim for more information. The Carrier responded and explained that although the Claimant's original date of hire preceded Austin's, Austin established permanent seniority rights at Kansas City under Rule 18 almost two months before the Claimant established permanent seniority at Kansas City.

The Organization, on September 23, 1983, referred to the previous January 26, 1983, claim and alleged the Carrier violated the time limits in that case. The Organization, in linking the two cases, argued that it followed therefore that the instant Claim should be paid once the January 26, 1983, Claim is settled. That Claim, however, remained unresolved until May 16, 1984.

As we view this record, the Organization sees the May 16, 1984, settlement of a different Claim on a time limit violation as establishing the basis for a sustaining Award. Notwithstanding, the record reveals this Claim was filed on June 7, 1983, and it is the Claimant's status as of that day and prior that we deem most relevant. Thus, the question to be answered is was the Claimant senior to Carman Austin on April 11, 1983? The record indicates he was not, and the only basis advanced by the Organization to rule differently is that on May 16, 1984, the Carrier allowed the January 26, 1983, Claim which adjusted the Claimant's seniority. Notwithstanding, we do not find such a settlement to have the retroactive effect asserted by the Organization. The plain fact is that as of the filing of this Claim, the Claimant was junior to Carman Austin.

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 10th day of September 1986.