

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

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

Dispute: Claim of Employees:

1. That the Missouri-Kansas-Texas Railroad Company violated the agreement between the Missouri-Kansas-Texas Railroad Company and the Brotherhood Railway Carmen of the United States and Canada, effective January 1, 1957, as amended, and the Railway Labor Act, as amended, when the Missouri-Kansas-Texas Railroad Company failed to correct the seniority roster of Carmen at Dallas, Texas by reissuing the roster with a transmittal letter and correcting the seniority dates of the following.

R. R. Lawson	11-12-82
K. R. Bruce	11-12-82
M. B. Hoppe	11-12-82
F. A. Beadle	12-17-82

2. That the Missouri-Kansas-Texas Railroad Company failed to correct and reissue the roster of Carmen at Dallas, Texas.

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.

The Claimants, R. R. Lawson, K. R. Bruce, M. B. Hoppe, and F. A. Beadle, are claiming seniority dates other than those appearing on the January, 1983, Seniority Roster. The Organization is claiming that the Roster should be corrected in order to show the order of reporting. It should be noted that the seniority date assigned to F. A. Beadle is December 17, 1982, and that is the seniority date that the Organization claims for this individual; therefore, the Claim of F. A. Beadle will be dismissed.

The Carrier argued the Claim was not timely filed in accordance with Rule 23 which provides that seniority lists will be open for protest for a period of 60 days after the posting of each Roster and Rule 27(b) which provides that grievances must be filed within 60 days from the date of the occurrence. The Carrier noted the Organization had specific instructions as to filing claims, including the initial protest of a Seniority Roster. The Organization argued that, contrary to the Carrier's allegation, the Claim was filed in accordance with the instructions given to the Organization in a conference on February 11, 1983, and that the Carrier's Officers failed to deny the Claim on procedural grounds, therefore, it must continue on its merits.

Upon complete review of the evidence, the Board finds that the Carrier's contention regarding the procedural question must be denied. The Board has not hesitated in the past to uphold appropriate procedural claims by either side, yet in this case, and particularly in light of the letter written on September 7, 1983 by the Carrier's Director of Labor Relations, to the General Chairman, the Board will deny the procedural issue and proceed on the merits.

The Organization stated the seniority dates of the Claimants should be from the date of reporting (date of employment) at this particular plant; therefore, Claimant Lawson should have a seniority date of November 15, 1982; Claimant Bruce, a seniority date of October 18, 1982; and Claimant Hoppe, a seniority date of November 1, 1982. Instead, each was given a seniority of November 12, 1982 by the Carrier. The Organization claimed a violation of Rule 23, which states in pertinent part:

"Rule 23: Seniority

- (a) Seniority of employees in each craft or sub-division thereof will date from time pay starts when employed.
- (b) Seniority of employees in each craft shall be confined to the point employed in each of the following classifications:"

The Organization stated that whether or not the employees were permanently assigned is immaterial and, therefore, the dates should reflect their starting dates, not the dates of their permanent assignment.

The Carrier stated the Claim has no merit. The bids in question were opened on October 29, 1982 and closed on November 12, 1982. The Carrier stated that in accordance with the 1950 letter, seniority is only established when bids are assigned. This letter outlines the procedure for furloughed Carmen to work temporary positions, and at some point in time to establish permanent positions at which time they would establish seniority. The Carrier noted there is no question as to the dates the Claimants were permanently assigned positions and stated these are the dates that should be utilized for their permanent Seniority Roster position.

Upon complete review of the evidence, the Board finds the Organization has not sustained their position in this matter. There is no showing that the Carrier has not followed its practice with respect to the assignment of seniority dates, as outlined in the System President's letter and the response of the Assistant General Manager during June, 1950. This practice is consistent with Rule 23 and the advertised vacancies in question. There is no showing that the Carrier did not follow the proper procedure in assigning permanent vacancies and, in accordance with their practice, the Claimants involved were assigned the proper seniority dates, which are the first day of assignment after the bids were closed. Seniority is only established from the time that these bids were assigned; therefore, the Claim will be denied.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: 
Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of February 1987.