

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

Parties to Dispute: (International Brotherhood of Electrical Workers
(Northeast Illinois Regional Commuter Railroad Corporation

Dispute: Claim of Employees:

1. That the Northeast Illinois Railroad Corporation violated the current agreement, particularly Rules 23 and 27, on January 19, 1984, when it improperly removed Electrician Helper G. Peterson from the seniority roster, and it failed to recall Mr. Peterson from a furloughed status in seniority order.

2. That accordingly, the Northeast Illinois Railroad Corporation be ordered to return Mr. Peterson to service with all of his seniority and other rights unimpaired and compensate him for all lost wages since October 13, 1982 in accordance with Rules 32 and 35.

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.

The Organization filed Claim on behalf of Electrician Helper G. Peterson on February 27, 1984, alleging Carrier violation of Rules 23 and 27, wherein Claimant's seniority rights were violated. Those Rules state in pertinent part:

"Rule 23.

In the restoration of forces senior laid off men will be given preference in returning to service, if available within fifteen (15) days.

Rule 27.

The seniority lists will be prepared from the Railroad's record on January 1st of each year and will be posted and open to protest for a period sixty (60) days from date of posting. Protests of seniority dates for correction will be confined to names added since posting of previous annual rosters, except to correct typographical errors."

In the case at bar the Organization makes the following argument. The Claimant, Mr. Peterson, had been listed on the Rock Island District 1983 Electrician Helpers Seniority Roster with a seniority date of August 6, 1979 and furloughed. On that list there is no mention of Mr. Gall who was hired on October 13, 1982. The Organization states:

"that Mr. Gall's name was devisively [sic] left completely off of the 1983 Seniority Lists, and when Mr. Gall's name was finally posted on the 1984 Seniority List, the Carrier deleted Mr. Peterson's name in an apparent attempt to cover up its wrongful actions in this case."

Since the records indicate that Mr. Gall was hired after the seniority date of the Claimant, who was next in line for recall under Rule 23, the Organization maintains that Claimant's rights were violated including Rules protecting dismissal from service without a Hearing. The Organization takes the position that as the NIRC carried Claimant on its seniority list in 1983 it thereby "acknowledged Mr. Peterson to be furloughed from NIRC service."

The Carrier raises both procedural and substantive objections to the case at bar. Procedurally, it argues that the alleged violation of Rule 23 had to be presented within 60 days from the date it hired Mr. Gall. On substantive grounds it maintains that Claimant worked on the former Rock Island Railroad and his name "was merely carried over." It further argues that "he was not recognized as having any furloughed status with this railroad." The Carrier points out that any requirement to hire Claimant ended on May 29, 1982 when the directed service order ceased in effect. The record indicates Mr. Gall was hired after that period and the Carrier notes he was hired with "full knowledge of the organization" and without protest on October 13, 1982. It is the Carrier's position that said Claim is procedurally untimely and substantively without merit.

As for the procedural issues, this Board finds that Rule 27 is applicable in that the Claim was timely filed within sixty (60) days of the posting of the seniority list. The Organization's claim of the applicability of Rule 23 is not accepted as the base date of the occurrence of that Claim would be October 13, 1982, and not continuing. Rules 34 and 35 are not applicable as they relate to discipline and discharge.

As to the substantive merit of the Claim, this Board has reviewed the record as it occurred on the property. The Carrier argues that the Claimant was never employed by the NIRC. The Organization argues that Claimant was and is an NIRC employee. The only evidence of record are the Seniority Lists of 1983 and 1984. That evidence makes clear that the Claimant was on the roster as a furloughed helper with an established date of August 6, 1979. The Seniority Lists were from the NIRC. That the Claimant must have appeared on prior seniority lists in 1980, 1981, and 1982, before being carried on the NIRC Seniority List in 1983 is not disputed. The 1983 NIRC list shows the Claimant as an employee on furlough. If the Claimant had never been employed by the NIRC, the evidence is not in the record as established on the property. Facts and lines of argument presented in ex parte Submissions are not admissible to the judgment of this Board. Nowhere on the property does the Carrier raise the issue of a clerical error. It is on the basis of the seniority list that the Board finds that Claimant held NIRC seniority.


As such, the protested seniority roster is in error. The major purpose of seniority is to provide maximum security to workers with the longest continuous service. Seniority rights are critical rights tied to the provisions of an Agreement and have no status apart from such an agreement. While the Carrier asserted that the Claimant had no employment relationship with the NIRC and as such was not covered by said Agreement, the record on property does not support Carrier's argument. Assertions are not fact and this Board must find, based on the evidence, that the Carrier improperly removed the Claimant from the seniority roster. As such, Rule 27 has been violated and the Claimant shall be reinstated with all seniority and other rights unimpaired and entitled to any lost wages and benefits in accordance with the provisions of the Agreement.

A W A R D

Claim sustained to the extent indicated in the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 20th day of May 1987.