

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

(Brotherhood Railway Carmen of the United States
(and Canada

PARTIES TO DISPUTE: (

(Chicago and North Western Transportation Company

STATEMENT OF CLAIM:

1. The Chicago and North Western Transportation Company violated the controlling agreement, specifically Rules 14, 15, 18, 19, 57 and 58 on March 1, 1986 when they authorized Mechanic-in-Charge Gary D. Hillman's name to be listed on the Oelwein, Iowa Carmen's seniority roster with a rank of #22 with a seniority date of March 9, 1983.

2. That the Chicago and North Western Transportation Company be ordered to delete Mechanic-in-Charge Gary D. Hillman's name and rank from the Oelwein seniority list as a Carman Mechanic, and rank as a Carman Helper be reinstated to Oelwein, Iowa Helpers' seniority roster with a rank of #1 with a seniority date of February 3, 1971.

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.

This is one of a number of cases advanced to this Board which span a time sequence wherein a change of Agreement occurred effective July 1, 1984. The essential facts of this dispute are that G. Hillman was hired as an Upgraded Carmen Helper on February 3, 1971. He worked in that position until promoted to Car Foreman on September 17, 1973 (which time did not count toward Journeyman status). He worked as Car Foreman until March 1, 1982 when he was assigned as Mechanic-in-Charge (MIC). On September 30, 1985, Hillman requested Journeyman (mechanic) status under Rule 57 of the July 1, 1984 Agreement. Carrier listed him as a Carmen on the Oelwein Seniority Roster of March 1, 1986.

The Organization protests Hillman's listing on the Carmen's Seniority Roster. It asserts that he did not fulfill the requisite conditions of Rule 57. Said conditions require a number of days as an Upgraded Helper and his position as MIC does not qualify. The Organization notes that his name did not appear as a Carman Mechanic on the 1985 Seniority Roster. Nor did Claimant protest its absence from the 1985 or 1984 Seniority Rosters. His last listing was as a Carman Helper on the 1983 Oelwein Seniority Roster. The Organization therefore protests the inclusion by Carrier of Hillman as a Carman on the 1986 Seniority Roster.

The Carrier contends that he properly qualified under Rule 57 for the position of Journeyman Carman. He worked the required 732 days and served as apprentice or obtained the necessary practical experience at Carmen's work. The Carrier's listing of him on the Seniority List was within the Agreement. The Carrier points to Rule 57 and the previous Rule 145 as not requiring that "all service be performed on apprenticeships or upgraded set up helper positions...." Following the letter of February 22, 1973 and Second Division Award No. 11099, the Carrier argues that days worked as a MIC count towards the days needed to qualify as a Journeyman Carman.

We note that the Rules cited and argued as controlling cover two different Agreements. The new Agreement was put in force on July 1, 1984. Rule 77 of said Agreement supersedes the prior Agreement as of that date. Rule 57 is from the 1984 Agreement.

The record as developed on property indicates that he made written request for Journeyman (mechanic) status on September 30, 1985. He stated that he accumulated 609 days as an upgraded Carman's Helper from February 3, 1971 to September 17, 1973. He further stated that as MIC he had completed the required 732 days on August 24, 1982 and requested upgrading as per Rule 57 of the new Agreement. The date of the 732 days is not refuted and stands as fact. The Organization notes that he completed his time under the old Agreement (June 4, 1921) Rule 145. It further notes that under the old Agreement, he failed to rescind his Helpers seniority.

The Board has carefully reviewed the time sequence of events. The 1986 Seniority List contested by the Organization lists seniority for Hillman as of March 9, 1983, and not the August 24, 1982 date requested. We agree with the Organization that in the instant case the applicable Rule at that time was Rule 145 which under the Agreement before this Board as amended required 845 days. His request under Rule 57 was in error. Carrier's assigned seniority date fixes logically on or about March 9, 1983, although the on property record is unclear.

Although claim of the Organization before this Board is made after said date, the events do occur and are therefore governed by the Agreement in effect during the genesis of the dispute. Two issues therefore need further resolution with respect to the instant case; the time counted by Carrier while he was performing service as MIC, and the protest of Claimant's seniority date.

The record before this Board supports the Carrier's position that the time he worked as MIC counts towards the accumulated days needed to qualify for Journeyman. Our review of Second Division Award 11099 on this same property and the February 22, 1973 letter applicable to the dates of occurrence support Carrier's position.

The last issue before this Board is the seniority protest. He was not listed as Carman Mechanic on the Seniority Rosters of 1984 or 1985. He did not protest those Rosters. His listing on the 1986 Seniority Roster is protested by the Organization as an error. That protest comes under the Rules of the July 1, 1984 Agreement and the applicable Rule is Rule 15 which states in pertinent part:

"Errors in dating or employees whose names appear on roster for the first time will be corrected on presentation of proof. Errors not protested within the ninety-day period herein specified cannot thereafter be changed."

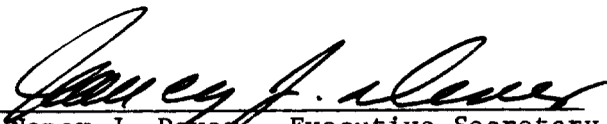
He did not protest prior Rosters. Organization protests the present Roster. We have searched the record for proof that his listed date was in error. Organization asserts that his time as MIC should not count toward his seniority date. His letter states that during time as MIC he "worked all phases of the carman craft...." Absent proof that the listing in dispute is in error the Board must deny the claim.

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 15th day of June 1988.