

The Second Division consisted of the regular members and in addition Referee Edward L. Suntrup when award was rendered.

(Messrs. Leo DeBenedictis, Amit Kolecki,
(William J. Burchill(Employees)

PARTIES TO DISPUTE: (

(New Jersey Transit Rail Operations

STATEMENT OF CLAIM:

This is a grievance relating to the positions of DeBenedictis, Kolecki and Burchill on the seniority roster, Electric Traction, Substation Electricians, Local 604. Messrs. DeBenedictis, Kolecki and Burchill are members of Local 604, IBEW.

Briefly, Messrs. DeBenedictis, Kolecki and Burchill were hired as groundsmen by Conrail, but sought positions in the Electric Traction Substation. Two positions became available. However, in spite of contract provisions requiring the posting of the jobs, two people were hired from the street. DeBenedictis, Kolecki and Burchill immediately grieved and were awarded the positions. The two new hires, Williams and Raguseo, took positions as groundsmen. Thereafter, the two new hires from the street were transferred to the substation. They were given seniority roster positions based on their original dates of hire into the substation, even though their hires were illegal, which put them ahead of DeBenedictis, Kolecki and Burchill on the substation roster.

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 were given due notice of hearing thereon.

The instant case deals with the Claimants' proper place on the Carrier's seniority roster. The Claimants are former employees of Conrail who transferred to New Jersey Transit Rail Operations (NJTRO), effective January 1, 1983, under an Implementing Agreement dated October 14, 1982. Under Rule 3 of this Agreement, a single NJTRTO seniority district was created for each existing Conrail craft of employees now working for the Transit Operation. Rule 3 of the October, 1982, Agreement states the following.

- (a) "Seniority of electricians begins at the time they are employed as such provided they qualify on such positions; except at the expiration of their training, the seniority of apprentices and helpers retained in the service will be carried to and shown on the roster and their seniority standing as electricians will date from the first day employed as apprentices and helpers.
- (b) Seniority of helpers will date from the first day employed as helpers provided that they qualify on such positions.
- (c) Employees entering the electrician's class without seniority as helper shall acquire like seniority in the helper class.
- (d) If two or more employees start to work on the same day, their seniority rank on the roster of their respective classes will be in the order of their date of birth, eldest first.
- (e) If two or more employees on the same roster acquire seniority in a higher class on the same day, their relative rank in the higher class shall be the same as in the class from which promoted.

3-B-1 The seniority roster for each class shall cover the entire NJT Rail operating territory and shall constitute a single seniority district."

The seniority dates of the three Claimants to this case on the NJTRO seniority roster, grandfathered in from Conrail, is August 25, 1982.

For a variety of reasons, related to the number of employees transferring from Conrail to NJTRO, as well as the theft of NJTRO's records in 1984, the first official seniority roster open for protest was posted in that year. A protest period was opened, and then extended (because of the theft) during this year. Roster protests were filed by the Claimants' other fellow employees in the spring of 1984. Since these protests dealt with dates prior to January 1, 1983, they were referred to Conrail for consideration and possible adjustment. These two employees had October 13 and 26, 1982, seniority dates, respectively, on the original NJTRO seniority roster for electricians. As a result of these protests, Conrail advised NJTRO that:

"Based on the (Electricians' Agreement Rule) and (the) record it is (Conrail's) position that the seniority date of July 28, 1982 (and not the October dates cited above) is the proper seniority date....for Raguseo and Williams..."

These two employees were advised on July 30, 1984, by NJTRO of Conrail's decision with respect to their proper seniority dates.

It was this decision by Conrail, forwarded to these other employees by NJTRO, which triggered the instant dispute before the Board.

Various correspondence of record between the law firm representing the three Claimants to this case, and the Carrier was initiated in August of 1983 concerning the decision by Conrail to change the seniority roster dates of employees other than Claimants. In September of 1984 the Claimants to this case, under their own signatures, filed what they called grievances protesting the change in the seniority dates of other fellow employees on NJTRO's electricians' seniority roster. These grievances were responded to by the Transit Rail Operations' Manager of Labor Relations with information from Conrail about their current seniority dates. After additional correspondence on this matter, and conference with the Claimants' Organization's Local Chairman, NJTRO's Director of Labor Relations wrote the Organization as follows in 1986:

"The instant dispute arises out of actions which took place in 1982 prior to the transfer of employees from Conrail to NJTRO. Consistent with what we have told the grievants and the Organization, NJTRO is not in a position to rule on the relative seniority standings of individuals if the issues involve pre-date the transfer of employees to NJTRO on January 1, 1983. All questions relative to this dispute have been reviewed with Conrail and the current seniority standings have been confirmed by Conrail Labor Relations; therefore, NJTRO is not is(sic) a position to change any seniority dates except those changes that are approved by Conrail."

Subsequent appeal was made before the National Railroad Adjustment Board by the law firm cited in the foregoing on behalf of the three Claimants.

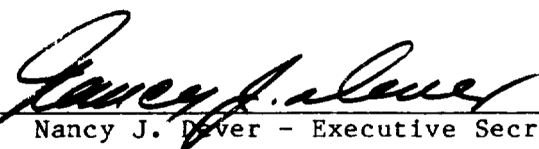
After study of the complete record before it the Board must conclude that whatever substantive dispute the Claimants have about their proper place on NJTRO's corrected, 1985 seniority roster, result of events which Conrail ruled on and which took place in 1982, must more properly be resolved by Conrail, not NJTRO. The record shows that NJTRO used the same procedures, which were the only ones available to it, in attempting to accommodate the instant Claimants' view of their proper place on the NJTRO seniority roster as it did with other fellow employees since the disputed events took place prior to January 1, 1983: NJTRO went to Conrail for a decision and clarification of the protests in question and such was forwarded to all parties concerned. NJTRO has jurisdiction to do no more under operant Agreements of record between itself and the Claimants.

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 11th day of January 1989.