

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 12977
Docket No. 12797-I
96-2-93-2-203

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

PARTIES TO DISPUTE: (Chris Porter
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(Burlington Northern Railroad

STATEMENT OF CLAIM:

"1. Whether Burlington Northern Railroad erred by not reinstating Mr. Porter to the Laborer Seniority Roster pursuant to Rule 13 (c) of the contract between Burlington Northern Railroad, Inc., and International Brotherhood of Fireman and Oilers dated 5-18-70 and pursuant to Rule 24(a) of the contract between Burlington Northern Railroad, Inc. and International Brotherhood of Fireman and Oilers dated 5-5-83;

2. Whether Mr. Porter was improperly removed from the Laborer Seniority Roster in 1986 and was removed without notice;

3. Whether Burlington Northern Railroad Inc.'s interpretation of Rule 24(a) of the contract between Burlington Northern Railroad, Inc. and International Brotherhood of Fireman and Oilers dated 5-5-83 is correct."

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 employee 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 dispute at issue basically concerns a question as to whether, upon being furloughed from a machinist helper job, the Claimant had a contractual right to exercise seniority into the ranks of laborer, a position which the Claimant had held in some past years.

The request to exercise seniority to a laborer's position was disallowed in a determination that Rule 13(c) of an agreement between the Carrier and its employees represented by the International Brotherhood of Firemen and Oilers (IBF&O) provides that anyone who is selected to fill a position covered by the Shop Craft Agreements on or after March 1, 1982, shall retain acquired IBF&O seniority for a period of six months while working under the Shop Craft Agreements, "... after which his seniority rights under this (IBF&O) Agreement will be forfeited."

It is unquestioned that the Claimant filled a position as machinist apprentice during the period August 20, 1990, until furloughed some eight months later on April 14, 1991, at which time the Claimant exercised seniority to a machinist helper position, from which he was furloughed on June 10, 1991. Clearly, the time that the Claimant was selected to fill a position covered by the Shop Craft Agreements occurred on or after March 1, 1982, and he worked in such position under the Shop Craft Agreements for a period of over six months. It must therefore be recognized that pursuant to Rule 13(c) of the IBF&O Agreement that the Claimant forfeited any acquired or pre-existing seniority as a laborer under the IBF&O Agreement.

In regard to that aspect of the claim whereby it is contended that the name of the Claimant was improperly removed from the Laborer Seniority Roster in 1986, the Board finds that recognition must be given to Rule 24(a) of the IBF&O Agreement. This rule provides a 60-day time period for employees to file protests over any aspect of the seniority roster after such roster has been updated and posted each year on the appropriate bulletin board. Rule 24(a) further states that "... the seniority date of an employee which has been posted on the roster for two consecutive years will be considered as the correct seniority date unless protest is made within 60 calendar days after the name of such employee has been shown on two consecutive rosters."

It is undisputed that the name of the Claimant has not appeared on the IBF&O Laborer Seniority Roster since at least 1986, and there is no documentary evidence of any protest having been made relative to such matter over the intervening years. The first protest about the name of the Claimant not appearing on the IBF&O seniority roster did not come until the filing of the instant claim, some five years after the Claimant's name was first removed from the roster. In other words, the Claimant slept on his rights for three years or more before registering a protest or challenge to his name having been removed from the seniority roster.

Based upon the above considerations of record, the Board finds no justification to hold that the Claimant was wrongfully denied an exercise of seniority into a laborer's position after being furloughed as a machinist helper.

AWARD

Claim denied.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 2nd day of February 1996.