

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13357

Docket No. 13234

99-2-97-2-3

The Second Division consisted of the regular members and in addition Referee Margo R. Newman when award was rendered.

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware & Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

- "1. That the Delaware and Hudson Railway Company (Division of CP Rail) hereinafter 'Carrier' violated the provisions of our agreement, when the Carrier failed to recognize and correct an error in the carman seniority roster. This error has provided carman Douglas Robinson with seniority he does not have.**
- 2. That accordingly, the Delaware and Hudson Railway Company be ordered to adjust and otherwise correct the placement of carman Le St. Gelais, hereinafter 'Claimant', on the system seniority roster. Thereby, adjusting the seniority date of carman Douglas Robinson to reflect his proper date and rightful position on this 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 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 were given due notice of hearing thereon.

This claim, initiated by Claimant on March 11, 1996, involves a protest to his position on the 1996 seniority roster being below Carman D. Robinson, whom he contends has an improper seniority date. There is no dispute that Claimant's seniority date and that of D. Robinson, as well as their respective positions on the seniority roster, appeared the same on the 1991, 1992, 1993, 1994 and 1995 rosters, and that no prior roster challenges were filed in this regard. Further, it appears that the 1991 seniority roster was put together by both Carrier and Organization officials.

As progressed on the property, the Organization asserted that the May 10, 1981 date listed for Robinson was a typographical error, showing that the 1982 roster indicates that Robinson was a non-four year employee as of February 1, 1981, and thus, he could not have attained that Carman seniority date. The Organization alleges that confusion arose when the parties went to a single system-wide seniority roster with the acquisition of Carrier by the CP Rail System in 1990, and that there is no time limit for correcting a typographical error, citing Public Law Board No. 5068, Awards 7 and 45, and Public Law Board No. 3408, Award 100. It requests the Board to correct the mistake made which gives Robinson more seniority than he is entitled to, relying on Second Division Award 12781.

Carrier's argument on the property and before the Board is that this protest of the 1996 seniority roster is untimely under Rule 22.2 of the Agreement, which provides that challenges to seniority rosters must be made within 60 days of their annual posting. It asserts that Claimant's failure to protest his position on the 1991 list within 60 days of its posting, and the fact that such list has not changed with regard to D. Robinson's seniority date and position above Claimant, undermines the Organization's contention that this is a mere typographical error and requires that the case be dismissed as untimely, citing Second Division Awards 12026 and 7414.

A review of the undisputed facts convinces the Board that this challenge to Claimant's position on the 1996 seniority roster and D. Robinson's listed seniority date is untimely. The pertinent Agreement language controlling this issue is found at Rule 22.2, which provides:

"The seniority territory for employees covered by this Collective Agreement shall be System. There shall be a single seniority list containing

the names of the employees represented by the Union. An employee's seniority date shall be based on his first date of entry into the craft, provided a continuous employment relationship has been maintained. The seniority lists will be open to inspection and copy furnished the Committee. Seniority rosters will be posted on shop bulletin boards during the month of January each year and will be subject to written protest pursuant to the grievance procedure for a period of sixty (60) days from the date of the posting."

This Rule language is far different from the provisions existing in the cases cited by the Organization, which all provided specifically that typographical errors could be corrected at any time. Further, this is not a case dealing with a furloughed employees' omission from a seniority roster or where the error in issue was admitted. The fact situation before this Board is more akin to that existing in Second Division Award 7414, where a roster was first challenged after five years under similar contract language requiring a protest within 60 days of its posting. In that case the Board, after discussing the intent of such provision, noted:

"Sixty days after it has been established, lacking a protest, the seniority roster becomes permanent and unchallengeable in the future, except that Management may revise it in January of each year. Thereafter, employees must challenge the list only insofar as the revision constitutes a change from the year before and this challenge must be made within the allotted 60 days by the employees aggrieved or the right to do so is forever lost. (See Third Division Award No. 12297; Second Division Award No. 1958; and First Division Award No. 12782)."

We conclude that, as in the above-quoted case, we are precluded from considering the merits of the claim due to its untimely filing.

AWARD

Claim dismissed.

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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 20th day of January 1999.