

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13706

Docket No. 13617

03-2-01-21

The Second Division consisted of the regular members and in addition Referee Nancy F. Eischen when award was rendered.

PARTIES TO DISPUTE: (International Brotherhood of Electrical Workers
(Burlington Northern Santa Fe Railway

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 26 in particular, the Burlington Northern/Santa Fe Railroad Company improperly assigned an incorrect seniority assignment to Mechanical Department Electrician Jeff Erickson of Lincoln, Nebraska on January 1, 1999 Mechanical Department Seniority Roster, Lincoln, Nebraska District.
2. That accordingly, the Burlington Northern Railroad Company should correct Mechanical Department Electrician Jeff Erickson’s seniority, more specifically his ranking order.”

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.

On April 28, 1997 the Carrier employed six individuals as Electrician Apprentices at its Lincoln, Nebraska, shop facility. Pertinent to this dispute, J. Erickson (the Claimant) and J. Stander were among the group.

Pursuant to Rule 38(b) of the Agreement, a routine apprenticeship consists of an instructional course as well as eight on-the-job training periods of 122 work days each, after which the apprentice establishes a retroactive journeyman seniority date. That is, after commencing work as an apprentice, an individual can report prior experience he

has had in the electrical field and have that experience credited, thereby reducing the number of on-the-job training days needed to complete the apprenticeship. After an employee completes the instructional portion of the course, he then can take a written examination, as early as the sixth period of service, thereby accelerating the process. If the individual is successful in that endeavor, he can complete the apprenticeship as early as the end of the sixth period and establish a journeyman date prior to completing the entire eight training period.

In these circumstances, both the Claimant and Stander were granted 610 days of experience credit. This experience credit, in conjunction with work days credited as Apprentices, gave both Stander and the Claimant a sufficient number of days so that they each completed their sixth period in mid-October 1997.

On October 28, 1997, Stander completed his instructional course work and elected to take the written examination. After passing same, he was given a journeyman seniority date of April 28, 1997. On November 12, 1997, a Railway Educational Bureau Manager of Student Services informed Carrier that Stander had successfully completed the requisite examination.

The Claimant completed his instructional course work and took the requisite written exam on January 9, 1998, after which the Carrier informed the Claimant that he had passed the written exam. Because of similar count-back credits, the Claimant, like Stander, was given a journeyman seniority date of April 28, 1997.

The record demonstrates that on or about August 12, 1997, the Carrier issued the "District 390 Electrician Apprentice List" (Carrier exhibit "A") in which the Claimant and Stander were listed in the following order:

#0086 J. Erickson
#0088 J. Stander

However, when the Carrier issued a January 16, 1999 Seniority Roster, the Claimant and Stander were ranked as follows:

#85 J. Stander
#86 J. Erickson

The Organization filed a claim on behalf of the Claimant, asserting that the ranking order set forth in the January 16 seniority roster was incorrect, and that the Claimant should have been listed ahead of Stander. In support of that assertion, the Organization noted that the Claimant's name had been placed above Stander's name on the April 1997 Apprentice roster, but was placed after Stander's name on the January 16, 1999 Seniority roster.

In its denial, the Carrier contended that the claim was not timely and should therefore be barred from consideration. Specifically, the Carrier contended that the seniority rosters were available "as early as August 1998" and "Claimant should have made any complaints about his standing within sixty days of his knowledge."

Regarding the merits of the claim, the Carrier stated that:

"Mr. Stander completed his apprenticeship on October 28, 1997 and was given an April 28, 1997 seniority date. Claimant completed his apprenticeship on January 9, 1998 and was given an April 28, 1997 seniority date. His name was placed on the roster immediately below that of Stander because he completed his apprenticeship later than Mr. Stander.

* * *

I can find no Agreement support nor past practice for the proposition that the claimant's name should be ahead of Mr. Stander. Nor have you provided any such support. Rule 26(b) has been cited in support of the claim. However, said rule is not supportive of the claim. That rule clearly applies to employees who are entitled to a seniority date immediately upon commencing services. Rule 38 is a special rule governing apprentice seniority and journeyman seniority upon completion of apprenticeship .

Rule 38 is silent with respect to what to do when two or more apprentices establish a seniority date on the same day by means of a countback procedure. I suspect that any past instances of that happening have resulted in the employee completing his apprenticeship first being placed on the roster ahead of an employee(s) completing his apprenticeship on a later date."

At the outset, the Carrier asserts that the Claimant knew the seniority standings and dates "as early as August 1998" and did not complain about same within the requisite 60-day time period. However, we do not concur in that regard. On January 19, 1998, the Claimant was informed that he had successfully passed the written exam portion of his apprenticeship and his seniority date, by virtue of the countback procedure was April 28, 1997. It was not until January 16, 1999, however, that the seniority roster dated January 1, 1999 disclosed the affected Apprentices' assigned Journeymen's date and ranking, rendering the Organization's February 17, 1999 claim timely pursuant to Rule 26 of the Agreement.

Turning then to the merits of the dispute, the Carrier maintains that because Stander completed his Apprenticeship on October 28, 1997 and the Claimant completed his Apprenticeship on January 9, 1998, the Claimant was rightfully placed after Stander

on the District 390 Seniority Roster. In that connection, Rule 38(k) of the Agreement provides that individuals, "... who end their training on the same date will be placed on the seniority roster in the same order as their standing in the training program. . . ." Stander completed his training after he successfully passed a written exam on October 28, 1997 and, some nine weeks later, on January 9, 1998, the Claimant successfully passed the written examination, thereby ending his training period. Although the Claimant was placed above Stander on the Apprentice Seniority List, he completed his training after Stander. Therefore, in the circumstances, we find no violation of the Agreement and this claim is denied.

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 31st day of January, 2003.