

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

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The Second Division consisted of the regular members and in addition Referee Raymond E. McAlpin when the awards were rendered.

(Richard Woznicki et al

PARTIES TO DISPUTE: (

(Port Authority Trans-Hudson Corporation (PATH)

STATEMENT OF CLAIM:

“Claim No. 1:

1. The Carrier violated the Claimant Robert Adams’ seniority rights when it retroactively froze his seniority on the Car Equipment Division, Electrician Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant’s seniority and afford him the opportunity to choose whether he wished to

continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 2:

1. The Carrier violated the Claimant David Amoros' seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 3:

1. The Carrier violated the Claimant Robert Delorenzo's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 4:

1. The Carrier violated the Claimant Michael Labruno's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 5:

1. The Carrier violated the Claimant Peter Lucero's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 6:

1. The Carrier violated the Claimant Tracy Mallue's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Electrician Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 7:

1. The Carrier violated the Claimant Frank Masters' seniority rights when it retroactively froze his seniority on the Car Equipment Division, Electrician Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 8:

1. The Carrier violated the Claimant John Morrone's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 9:

1. The Carrier violated the Claimant Gerard Ortu's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 10:

1. The Carrier violated the Claimant Richard Quattrocchi's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Electrician Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 11:

1. The Carrier violated the Claimant Kenneth Wallace's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Machinist Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 12:

1. The Carrier violated the Claimant Gary Wertz's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU.

Claim No. 13:

1. The Carrier violated the Claimant Richard Woznicki's seniority rights when it retroactively froze his seniority on the Car Equipment Division, Car Inspectors Seniority Roster, which was posted June 6, 2003.
2. The Carrier shall now be required to restore Claimant's seniority and afford him the opportunity to choose whether he wishes to continue to accumulate RITU seniority in accordance with the February 28, 2002, letter agreement between Carrier and RITU."

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.

The Claimants in this matter were promoted from TCU/Carman represented positions to TCU/ARASA supervisor positions. Prior to their promotions, they were covered under the TCU/Carman Agreement. Under the applicable rule, which was Section 11, Seniority, of that Agreement, Claimants were not required to pay dues to maintain their seniority rights because they were working jobs covered by the same Union.

In 2001 the Carman on PATH voted to decertify the TCU and form the Railway Independent Transit Union (RITU). The Claimants remained on the craft seniority rosters and the Claimants continued to accumulate seniority.

During January, 2002 the RITU informed the Carrier that individuals so situated were potentially listed incorrectly on the seniority roster. New provisions in the PATH/RITU Agreement were negotiated potentially covering this situation. The Claimants were not advised of the changes to the retention of seniority provisions and, therefore, did not protect their seniority under the new terms of the PATH/RITU provision. It was only when the Carrier posted the June, 2003 roster that the Claimants were made aware of their situation. The Carrier retroactively reduced seniority back to the date that the Claimants were promoted to their ARASA positions.

The Carrier urged the two Unions to work out this situation but there was ultimately no agreement. The Claimants then filed individual claims.

The Carrier argued that this is a dispute between the TCU/ARASA and the RITU

Carmen. RITU is the bargaining agent, therefore, the only agent of change. RITU argued the prior practice of crediting time served in ARASA for TCU Carmen seniority is not immutable. In a number of cases such findings have been made. The RITU would note that these individuals would have been on the seniority list so that the RITU would have a duty to represent those individuals whether they paid dues or not. They have rights and hold the craft title as long as they hold seniority. A number of Federal Appeals Court cases state that individuals in this situation have no vesting of seniority. Therefore, it is appropriate for the RITU to require dues for representation. The Claimants in this matter want a free ride. There is no Collective Bargaining Agreement violation under the contract with PATH and RITU. Under the 60 day rule no one was denied the rights contained in those provisions, therefore, there is no situation that is grievable. Cases have found that, where there is a revised seniority list without protest, that seniority list stands. The RITU's position is that, if the individuals chose to pay the RITU dues, then they would continue to accrue seniority, otherwise they would go back to the original date of promotion.

RITU further argued that, even though there were no direct notices to ARASA members, there were meetings about this situation. The Union merely wants dues as a criterion to maintain and accrue seniority. The Claimants were given an opportunity to continue their seniority by paying dues. One individual took that option. The rest did not. Based on the above the claims must be denied.

The Carrier's position is that it recognized that the promoted Carmen did not pay dues. The Carrier does not want to favor one organization over the other. This is not an uncommon situation on the property. The Carrier urged the competing Unions to work out this situation and no agreement was reached. Therefore, the Claimants filed individual claims and agreed to the delays within the procedure. RITU has admitted to the practice on the property. The Claimants do hold seniority and there is no right to remove earned seniority. It is also proper for the Claimants to progress their claim under the RITU agreement since they hold seniority under the RITU agreement. The Claimants do not dispute the right for the Parties to enter an agreement they just dispute the interpretation. The Claimants have rights and they have the right to protect those rights.

The Carrier further notes that the RITU notified the Claimants only of the change of seniority not the specifics. The Carrier would further note that RITU not only froze the seniority, but also reduced seniority to a date prior to the effective date of the RITU Agreement. The Carrier notes that there was no agreement between the Carrier and the

two organizations involved for a retroactive reduction of seniority rights. RITU could have negotiated this when it took over this bargaining unit, but it did not.

Upon complete review of the evidence the Board finds that it is appropriate for all claims involving the 13 Claimants to be adjudicated in this single Award. These 13 Supervisors were promoted from the TCU/Carmen PATH Agreement. Subsequently, the RITU decertified the TCU/Carmen and accepted the Carmen Agreement. The individuals remained on the Carmen rosters and continued to accumulate seniority. These individuals paid their dues to one craft. The status quo remained until the Parties negotiated the February 28, 2002 Agreement.

The Board finds that, based on the evidence presented above and the record in this matter, the Carrier should not have frozen and reduced Claimants' seniority on June 6, 2003 because Claimants did not receive advance written notice. The 13 Claimants will be given 90 calendar days from the effective date of this award to pay dues to the RITU. Otherwise, their seniority will be frozen as of January 1, 2003. The Board would note that the individuals never received written notice of the changes desired by RITU (see First Division Award No. 26059). The Carrier will issue a written notice to each Claimant – proof of receipt required – advising Claimant of his options based on this Award and the deadline to reply and retain seniority after January 1, 2003. The Board would finally note that individuals have the right to file claims and that this matter is properly before the Second Division.

Claim sustained in accordance with the Findings.

AWARD

Claim sustained.

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

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**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division**

Dated at Chicago, Illinois, this 25th day of April 2006.