

Award No. 185

Docket No. 162

2-MP-CM-'37

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee John P. Devaney when award was rendered.

PARTIES TO DISPUTE:

**RAILWAY EMPLOYEES' DEPARTMENT, A. F. OF L.
(CARMEN)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Carmen Jones and Bickel be compensated for all time lost account of being displaced by H. W. Stroman, a junior employe.

EMPLOYEES' STATEMENT OF FACTS: On November 17, 1936, H. W. Stroman, employed as inspector foreman at Jefferson City, Missouri, account of his position as foreman being abolished was permitted to exercise seniority as carman at Lesperance Street, St. Louis, ahead of Carmen Jones and Bickel, who were laid off in force reduction at the time.

POSITION OF EMPLOYEES: That Rule 25, Paragraph (c) of current wage agreement makes it mandatory for Missouri Pacific to post seniority rosters, showing names and seniority dates of employes for each craft and seniority subdivision thereof as of January 1 and July 1 of each year, same being for the purpose of giving each employe an opportunity to review each posting to determine if his name is properly recorded, as well as checking for other inaccuracies that might have developed since last posting; the rule further providing that all names and seniority dates so recorded and not protested in writing within 30 days from date of second posting shall be considered permanently established, following which said seniority roster will be approved by master mechanic, or superintendent, and local committee.

Missouri Pacific agreement, effective July 1, 1936, Rule 25:

"(c) Separate seniority lists will be compiled by the Shop Superintendent and/or Master Mechanic as of January first and July first of each year for each craft and seniority subdivision thereof as listed hereunder. Seniority dates shall be considered permanently established if not protested in writing within thirty (30) days from time of second posting. Seniority rosters will be approved by Shop Superintendent and/or Master Mechanic and local committee, and copies thereof will be furnished the local and general committees."

It is a matter of record that Missouri Pacific posted seniority rosters twice each year at Lesperance Street, St. Louis, same being approved by master mechanic and local committee, and covering the years of 1933, 1934, 1935, and 1936, and that at no time subsequent to the employment of H. W. Stroman in any capacity has his name ever been recorded on any seniority roster up to and including December 31, 1936.

POSITION OF CARRIER: Mr. Stroman established seniority at Lesperance Street, St. Louis, by reason of his employment as a carman on August 5, 1933, under Rule 25 (e) of wage agreement reading in part as follows:

"The seniority of employes will date from the time pay starts when employed or re-employed."

He was subsequently, or on October 19, 1933, laid off and later promoted by the company to position of supervisor and entitled to retain his seniority as a carman at Lesperance Street, under Rule 25 (d), reading:

"Men transferred or promoted by the company to positions as supervisors or other official capacity will retain their home point seniority unimpaired so long as continuity of service is unbroken."

The employes contend that Mr. Stroman's name did not appear on the carmen's seniority roster although he claims to have talked to the car foreman at Lesperance Street at the time he was laid off in October, 1933, as well as to the master mechanic, and the chief clerk calling their attention to the fact that his name was not on the list. The master mechanic states that the placing of his name on the list was overlooked. On November 17, 1936, master mechanic notified all concerned to correct the seniority roster, reinstating Mr. Stroman's name thereon as of August 5, 1933, and he was subsequently called back in line with his seniority for work on November 30, 1936, at which time, however, there were two employes junior to him on the seniority roster, to-wit: Messrs. H. Jones, August 8, 1933, and R. J. Bickel, December 19, 1935.

Carrier contends that Mr. Stroman established his seniority pursuant to rules of the wage agreement with the shop employes, and that he was permitted to retain his seniority standing as established when subsequently promoted to an official position; further, that the omission of his name from the seniority roster as the result of an oversight by the master mechanic, could not jeopardize Mr. Stroman's rights as an employe under the wage agreement with the shopmen.

It is a fact that Rule 25 (c) provides in part:

"... Seniority dates shall be considered permanently established if not protested in writing within thirty (30) days from time of second posting. ..."

It has never been the practice under this rule or any other rule of the schedule to deny an employe's seniority properly established under the wage rules.

OPINION OF THE DIVISION: Several violations of the rules by H. W. Stroman have been alleged by the employes.

Principally it is alleged that he failed to comply with Rule 25 (c), and, therefore, lost his seniority standing.

It is unnecessary for us to discuss employe Stroman's failure to comply with any other rules. Rule 25 (c) is clear and allows no other conclusion but that failure to protest in writing seniority dates results in conclusive presumption that such dates are correct. There is no option and there is no alternative.

Mr. Stroman, in failing to protest his seniority date or his seniority listing, under Rule 25 (c), technically lost his right to do so at any later date in any other manner. There is here no question of fact. It is not even claimed that Stroman at any time made written protest. We have not overlooked the contention of the carrier that it is unfair to claim that Stroman lost his seniority under Rule 25 (c). We cannot concur that it is unfair, although it must be conceded that under the circumstances it is a hardship. But, as already has been stated, the language and intent and requirements

of Rule 25 (c) are clear and unambiguous and we have no choice but to apply it.

Moreover, it cannot even be claimed that employe Stroman was not familiar with the requirements of the rule, as he had performed the duties of a supervisor, which duties include a working knowledge of rules such as this one. We find no necessity for here considering or deciding the effect of Rule 25 (d), since in this case Stroman never protected seniority rights, if any, at Lesperance Street.

The claim of the employees must be sustained.

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 employees involved in this dispute are respectively carrier and employe 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.

The parties to said dispute were given due notice of hearing thereon.

The carrier violated its agreement in allowing H. W. Stroman to displace Carmen Jones and Bickel.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 9th day of December, 1937.