

Award No. 590

Docket No. 636

2-IC-FO-'41

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 99, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

ILLINOIS CENTRAL RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That J. B. Paris' seniority date in Class A be changed from February 2, 1931, to May 1, 1926, at the locomotive department, Markham shops, in accordance with provisions of Rules 20 and 23.

JOINT STATEMENT OF FACTS: J. B. Paris entered service as stationary fireman at Markham locomotive department, May 1, 1926, and was promoted to stationary engineer, December 13, 1926. He transferred to Markham car department as stationary engineer June 1, 1930, and was laid off after working a short time. He worked in the Markham locomotive department from July 16, 1930, to August 31, 1930, as stationery engineer and fireman. He then worked at the 14th Street power plant, Chicago, from September 1, 1930, to November 15, 1930, and next worked at 27th Street locomotive shops from November 16, 1930, to January 31, 1931. He returned to Markham locomotive department power plant as stationary engineer February 2, 1931.

POSITION OF EMPLOYES: As stated in the employees' claim, Mr. J. B. Paris did begin work in the power plant, Markham locomotive department, May 1, 1926, and was promoted to stationary engineer, December 13, 1926, which is confirmed in the joint statement of facts.

Subsequent to the time Mr. Paris was promoted and assigned as stationary engineer, until June 1, 1930, when he was laid off such employees were not covered by the provisions of any contract; however, while laid off he was assigned to work at points, now established as separate and distinct seniority points by agreement effective April 1, 1935, other than the Markham locomotive department power plant, as either engineer or fireman respectively. Mr. Paris later returned to Markham, the point in question, February 2, 1931, as engineer.

In compiling the seniority lists on the system as of April 1, 1935, the first roster ever compiled for such employees, actual service records were considered. Of necessity the date of entry into service was given consideration, which in many instances and practically all such dates were prior to the effective date of the current agreement. Such consideration established the retroactive principles essential in determining seniority dates and status of employees affected. Since retroactive principles of necessity were established it is desired to direct attention of this Board to Rule 23, which reads:

Employees assigned to temporary service or temporarily transferred by direction of the management from one point to another, will retain their seniority at the regular point of employment.

As evidence warranting establishing February 2, 1931 as the correct seniority date for Paris, the following letter is quoted from the records at Markham:

Markham, May 28, 1930.

Mr. H. L. Needham:

Attached find transfer and service record cards for a Mr. J. B. Paris, stationary engineer, Markham, who desires to be transferred to the Car Department at Markham under Mr. Hobson.

Kindly forward.

GH:AL

/s/ L. B. Hughes
General Foreman

This shows that Mr. Paris voluntarily asked to be transferred from one point to another in a different department under different supervision, before the current schedule was effective, and even if Rule 23 was considered retro-active, which it cannot, the evidence clearly refutes claim to a prior seniority date.

It is the carrier's position that in fairness to all of the employes concerned and due to the fact that no rule of the agreement has been violated as claimed, while on the contrary the action of the carrier was strictly in accordance with the rules of the agreement and understanding had as well as the interpretations to the agreement, the claim should be declined without qualification.

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 employes 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 waived right of appearance thereon.

J. B. Paris worked at various points as stationary fireman and engineer between May 1, 1926, and February 2, 1931, at which time he was employed at the Markham locomotive power plant as stationary engineer.

He was shown on the Markham roster with seniority date of February 2, 1931, for the years 1935, 1936, 1937, 1938 and 1939, without protest until June, 1939.

Rule 20 provides in part:

"* * * Rosters will be open to correction for a period of thirty days thereafter and will be posted on the bulletin board and a copy furnished the local committee."

As Paris did not protest his seniority as provided for in this rule during the period of years mentioned, this Division finds no basis for disturbing this seniority date.

AWARD

Claim of the employes denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 13th day of March, 1941.