

Award No. 864

Docket No. 820

2-C&NW-MA-'42

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 12, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (MACHINISTS)**

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYES: That under the controlling agreement and understandings on same, the name of Machinist C. R. McConnell, should not be shown on seniority roster at the North Fond du Lac Motor Track Car and Roadway Equipment Repair Shop with seniority date of September 1, 1941, but should be given date of May 25, 1942, when he reported for work. Machinist C. R. McConnell entered the service at this said shop on May 25, 1942.

EMPLOYES' STATEMENT OF FACTS: When seniority roster for machinists in motor track car and roadway equipment repair shop, north Fond du Lac, Wisconsin, was issued as revised on September 2, 1941, Machinist McConnell's name did not appear on same, but when new seniority roster was issued on January 1, 1942, Machinist McConnell's name appeared on same with date of September 1, 1941, although he had not reported and assumed work at the point when the new roster was issued on January 1, 1942.

POSITION OF EMPLOYES: The employees contend that management cannot arbitrarily transfer an employee to another point under provisions of Rule 18, federated crafts' agreement, without advising the organization affected in line with understanding reached with management and acknowledged by letter under date of May 1, 1941 by the director of personnel. (See Exhibit A.)

The employees further contend that an employee cannot transfer and accumulate seniority at a point until such time as he actually assumes work at the point transferring to, without arrangements being made to cover same by the organization affected.

In the instant case the employees are advised, after protesting the placing of Machinist McConnell on the seniority roster with a date of September 1, 1941, that Machinist McConnell was transferred to the North Fond du Lac motor track car and roadway equipment repair shop as of September 1, 1941, and was given a leave of absence due to an injury received while working on the Iowa division, although the employees had no knowledge of same until the new seniority roster was issued on January 1, 1942.

Management takes the position that the understanding reached relative to furnishing copies of transfers made under provisions of Rule 18 referred primarily to transfers in the mechanical department. Their position is not

Referring to the above subject, last discussed in conference today with you and Mr. Wm. Bay, at which time it was agreed we would make no transfer of engineering department employes to Boone, Iowa in connection with motor car repair work.

It was further agreed that an engineering department motor car and roadway machine repair shop would be established at North Fond du Lac, Wisconsin, and that the following engineering department employes would be transferred thereto:

Name	Seniority Date
A. Julian	5- 5-32
C. H. Cahill	7- 2-12
A. E. Bothman	5-13-14
J. F. Rybick	3-16-27

and that subsequent to the establishment of such shop, on or about December 1, 1940, senior qualified laid off machinist, who we understand will be B. J. Starke, now employed at Kaukauna, and senior qualified carman, who we understand to be John Leick, now employed at Kaukauna, will be transferred to the engineering department repair shop at North Fond du Lac.

Subsequently, as the result of increased requirements in the motor car repair shop at North Fond du Lac, mechanics assigned to such work at other points were given an opportunity for employment in said repair shop in the order of their seniority, and C. R. McConnell, with seniority date of January 18, 1939, was assigned as mechanic at North Fond du Lac on his request. However, at that time McConnell was out of service account an injury received as the result of an accident while in the employ of the railway company. In consideration of this fact, and in order to properly handle the work at North Fond du Lac, the next senior mechanic was assigned at North Fond du Lac pending McConnell's recovery from his injury, which mechanic was O. J. Horn, with seniority date of July 19, 1939.

The employes are protesting the establishment of a seniority date in favor of McConnell ahead of Horn, on the contention that McConnell did not actually take up service at North Fond du Lac prior to Horn reporting for duty at that point, predicated their contention on Rules 18 and 26, Federated Shop Crafts' Agreement, reading:

Rule 18 Employes transferred from one point to another, with a view of accepting a permanent transfer, will after thirty days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employes will not be compelled to accept a permanent transfer to another point.

Rule 26 When forces are reduced and men are needed at other points they will, at their request, be given preference to transfer to nearest point, with privilege of returning to home station when force is increased, such transfer to be made without expense to the Railway Company. Seniority to govern all cases.

POSITION OF CARRIER: It is the position of the railway company that there were no rules violations in assigning McConnell to position of mechanic, North Fond du Lac, Wisconsin, and giving him a seniority date in advance of seniority date given Horn, who subsequently transferred thereto.

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 were given due notice of hearing thereon.

This dispute involves the proper interpretation of Rule 18:

"18. Employes transferred from one point to another with a view of accepting a permanent transfer, will after thirty days, lose their seniority at the point they left, and their seniority at the point to which transferred will begin on date of transfer, seniority to govern. Employes will not be compelled to accept a permanent transfer to another point."

When an employe is transferred to another point his seniority starts on the date the employe actually commences work at the point to which transferred. It must be held the transfer is not complete until the employe actually commences work.

Machinist C. R. McConnell could not establish seniority at North Fond du Lac until he actually commenced work at that point.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 12th day of November, 1942.