

Award No. 904

Docket No. 847

2-CB&Q-EW-'43

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

The Second Division consisted of the regular members and in addition Referee Herbert B. Rudolph when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 95, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. OF L. (ELECTRICAL WORKERS)**

**CHICAGO, BURLINGTON AND QUINCY RAILROAD
COMPANY**

DISPUTE: CLAIM OF EMPLOYEES: That under the controlling agreement, Telegraph and Telephone Lineman S. Peterson, is entitled to the seniority date of June 25, 1940, and to the position which he bid in at Sterling, Colorado, advertised in Bulletin No. 7, dated January 24, 1942.

EMPLOYEES' STATEMENT OF FACTS: Prior to June 25, 1940, S. Peterson was employed as a Class C floating gang lineman.

On June 25, 1940, S. Peterson was assigned to fill a vacancy in Class B service at McCook, Nebraska, which he had been and was still filling when letter assignment was made on August 5, 1940, and therein he remained for approximately two years, until he was returned to Class C service.

At Sterling, Colorado, the carrier advertised a Class B position in Bulletin No. 7, January 24, 1942.

Class B Lineman S. Peterson, then working in Class B, made application for said position, and Class C Lineman W. E. Sullivan also made application for the position.

No Class B linemen, except S. Peterson, bid for the Bulletin No. 7 job, but W. E. Sullivan, exclusively a Class C lineman, on February 6, 1942, was assigned to the job in preference to Class B Lineman Peterson.

POSITION OF EMPLOYEES: The employes contend that under the provisions of Rules 11 and 15, S. Peterson is entitled to a seniority date of June 25, 1940 as a Class B lineman.

Rule 15 provides in part:

“(a) All new positions paid a monthly rate and vacancies thereon of thirty (30) days or more will be bulletined for a period of ten (10) days.

(b) Applications for new positions or vacancies referred to in paragraph (a) must be filed in writing with the officer designated in bulletin and the senior qualified applicant will be assigned within seven (7) days thereafter.”

mean that no employe could feel secure in making application for a position and the carrier would be vulnerable to protests and claims, at the capricious will of any employe who had the inclination to wait in concealment, without saying anything whatever about dissatisfaction in regard to seniority standing, and then at some late date precipitate a dispute with respect to the assignment of an employe ranking ahead of the disgruntled employe on seniority rosters. The carrier would deplore the creation of such an undesirable situation and firmly believes that the Board will concur in that opinion.

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.

Under Rule 11 (a) Lineman S. Peterson should have had a Class B seniority beginning June 25, 1940, the date he was assigned to and his pay started on the Class B position at McCook. Whether he is precluded from claiming that date as the beginning of his Class B seniority because of his failure to protest the 1941 seniority roster within the time limit provided in Rule 12, we need not determine. Peterson worked at his Class B position all of the year 1941, and when the 1942 roster failed to show his Class B seniority, he was privileged within sixty days after the posting of that roster to protest the failure to show his Class B seniority as beginning, at the latest, at the expiration of his time for protesting the 1941 roster. Peterson did protest the 1942 roster within sixty days following January 1, 1942. We are convinced, therefore, that Peterson had established Class B seniority, and his right to the position at Sterling, Colorado.

AWARD

Claim sustained as per findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 7th day of June, 1943.