

**Award No. 942**

**Docket No. 913**

**2-PT-FO-'43**

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**SECOND DIVISION**

**PARTIES TO DISPUTE:**

**SYSTEM FEDERATION NO. 18, RAILWAY EMPLOYEES'  
DEPARTMENT, A. F. OF L. (FIREMEN & OILERS)**

**PORTLAND TERMINAL COMPANY**

**DISPUTE: CLAIM OF EMPLOYEES:** That Laborer A. C. Thorne is entitled to rank ahead of Laborer J. B. Jenkins on the current seniority roster.

**EMPLOYEES' STATEMENT OF FACTS:** At Rigby enginehouse, South Portland, Maine, the carrier re-hired A. C. Thorne, and instructed him to report for work on November 14, 1939, at 3:00 P. M. He reported as instructed for duty but was not used. Thereupon, he was ordered to report for work at 7:00 A. M. the next day, November 15, 1939, which he did, and has since remained in the service.

Laborer J. B. Jenkins, Jr., also entered the service of the carrier at 7:00 A. M., November 15, 1939, in the same seniority district.

Laborer Thorne was carried on the seniority rosters ahead of Laborer Jenkins, Jr., until 1942, when in January, Jenkins, Jr., was arbitrarily placed ahead of Thorne on the 1942 seniority roster.

**POSITION OF EMPLOYEES:** Rule 1 (c) of the May 29, 1930, agreement, reads—

January 1st and July 1st of each year a seniority roster of all employes at each point, by classes and departments, will be issued, showing name, date of entering service and date accepted service in the class, and will be posted in a place accessible to those affected, and open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employe or his representative, such error will be corrected.

and there was no error to correct in the rank of Thorne and Jenkins, Jr., on the 1940 and 1941 rosters. It follows that there was no alteration in the rank of these employes on the 1942 roster in order.

In accordance with the submitted agreement of September 30, 1941, identified as Exhibit A, a separate roster for employes represented by the firemen and oilers was approved, effective November 1, 1941, by the former general chairman of the firemen and oilers, Martin J. Malia, and Master Mechanic W. C. Lunt, and that roster is submitted, identified as Exhibit B. It will be noted that A. Thorne still ranks ahead of J. B. Jenkins, Jr., on said roster.

It is our contention that the carrier reversed the names of these employes in January 1942 in violation of Rule 1 (c), and in support of this position we submit the 1940 and 1941 seniority rosters, identified as Exhibits C and D.

**CARRIER'S STATEMENT OF FACTS:** Rule I of the effective agreement between the Portland Terminal Company and the Brotherhood of Railroad Station Employes, Inc., provides:

made application for employment on March 11, 1939, while Thorne made application for employment on May 4, 1939. It further complies with "D," in that they both entered the service on November 15, 1939, and were placed on the list in alphabetical order; that they both started work at Rigby at 7:00 A. M. on November 15, 1939.

That on November 17, 1939, two days after these employes entered the service, a roster for promotion of laborers to hostler helpers (appended to agreement effective November 20, 1939, carrier's Exhibit A) placed Jenkins ahead of Thorne.

That the carrier recognized its error in having placed Thorne ahead of Jenkins on the seniority rosters of January 1, 1940, and January 1, 1941, and corrected the roster effective January 1, 1942, and made adjustment to Jenkins incidental to those errors, carrier's Exhibit B.

The carrier respectfully suggests that the claim should be declined.

**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 at hearing thereon.

The parties agree that on November 15, 1939 Arthur C. Thorne and James B. Jenkins were both employed as laborers at the Rigby engine house and that both began working at Rigby engine house at 7 A. M. on that date.

The parties further agree that the seniority roster of January 1, 1940 and that of the following year, 1941, showed the name of Laborer Arthur C. Thorne above that of Laborer James B. Jenkins. Rule 1 (c) of the current agreement reads:

"January 1st and July 1st of each year a seniority roster of all employes at each point, by classes and departments, will be issued, showing name, date of entering service and date accepted service in the class, and will be posted in a place accessible to those affected, and open to protest for a period of sixty (60) days from date of posting. Upon presentation of proof of error by an employe or his representative, such error will be corrected."

Laborer Jenkins failing to protest his seniority listing under Rule 1 (c) technically lost his right to do so at any later date in any other manner. The language of Rule 1 (c) and requirements are clear and unambiguous and we have no choice but to apply it.

#### AWARD

Claim of employes sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

ATTEST: J. L. Mindling  
Secretary

Dated at Chicago, Illinois, this 21st day of September, 1943.