

Award No. 1015

Docket No. 948

2-L&N-FO-'44

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee I. L. Sharfman when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 91, RAILWAY EMPLOYES'
DEPARTMENT, A. F. OF L. (FIREMEN AND OILERS)**

LOUISVILLE AND NASHVILLE RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYES: That the carrier arbitrarily and without any authority under the former and the current agreements reinstated the names of former laborers Cornelius Hale, McKinley Inman, Jas. C. Lovelace, O. B. Hayes, J. B. Jones and J. Speed Carpenter on the Firemen and Oilers, Corbin, Kentucky, January 1, 1942 seniority roster.

That the carrier be ordered to delete the aforesaid names from the Firemen and Oilers Corbin, Kentucky seniority roster issued on and subsequent to January 1, 1942.

EMPLOYES' STATEMENT OF FACTS: Messrs. Cornelius Hale, McKinley Inman, Jas. C. Lovelace, O. B. Hayes, J. B. Jones and J. Speed Carpenter were formerly in the employ as laborers of the carrier at Corbin, Kentucky.

These employes have not worked for the carrier in the craft of firemen and oilers at Corbin, Kentucky, for several years. However, their names were carried on the laborers' seniority rosters up to and including the seniority roster which terminated on December 31, 1939.

The names of these former laborers were not shown on the 1940 and 1941 seniority rosters of laborers, but their names were reinstated by the carrier on the January 1, 1942, laborers' seniority roster at Corbin, Kentucky, although they were not then and have not since been employed as laborers at Corbin.

These men have been employed in higher classifications at south Louisville shops and Corbin, Kentucky, prior to and since December 31, 1939.

The controlling agreements are dated:

- a. Effective October 1, 1938.
- b. Effective June 1, 1942.

POSITION OF EMPLOYES: The name of Cornelius Hale was last shown on any seniority roster with labor seniority dating on roster which expired on December 31, 1939, until again added to roster on January 1, 1942. The name of McKinley Inman was last shown on any seniority roster with labor seniority dating on roster which expired December 31, 1939, until again added

JOHN B. JONES—employed as laborer at Corbin, Kentucky, February 17, 1925; promoted to machinist helper January 9, 1929; cut off April 18, 1931, and worked as laborer and extra helper until October 5, 1936, when he was sent to south Louisville, Kentucky, shops as machinist helper; recalled to Corbin as machinist helper on October 6, 1939, but elected to remain at south Louisville, forfeiting his age as helper at Corbin. Carried on helpers' roster, which showed his laborer's age, including July 1, 1939, roster, and then, account of losing his helper's age, his name was inadvertently omitted from the laborers' roster until January 1, 1942.

J. SPEED CARPENTER—employed as laborer at Corbin on January 18, 1926; promoted to machinist apprentice June 13, 1929, completing his apprenticeship May 23, 1934, at which time he reverted to laborer, working as laborer and emergency machinist until September 1939, when he was sent to south Louisville, Kentucky, shops as machinist. His name last appeared on the Corbin laborers' roster of July 1, 1939, when, account of working at another shop in a higher classification, his name was inadvertently omitted from the laborers' roster until January 1, 1942.

POSITION OF CARRIER: In placing these men on the January 1, 1942, seniority roster, it is not felt that there was any violation of the agreement. Rule 12 (f) of the agreement effective April 1, 1938, which was in effect at that time, reads:

Seniority rosters will be revised in January and July of each year. They will be posted and open to protest and proper correction for a period of 30 days from date of posting, which shall be shown thereon. After such time, the dating shown on the roster shall govern for that period. Any seniority dating which has remained unchanged on four successive rosters shall not be open to further protest. Copies of rosters shall be furnished Local Chairman, Local Committeeman, and Secretary-Treasurer of the Association.

In other words, the agreement provides that any seniority **dating** which has remained unchanged on four successive rosters shall not be open to further protest and this is the position on which the question was handled on the property by the general chairman of the firemen and oilers' organization. It is our position that this feature of the rule is not involved, since the dating of these men was not changed—as there was no dating shown on the roster—and there is nothing in the rule, nor was it ever intended, to deprive an employe of his established seniority dating, earned through years of service, unless it became necessary to forfeit same in conformity with the agreement rules. After leaving Corbin, each of the men mentioned was employed at our south Louisville, Kentucky, shops, where they are working at present, and therefore they had no opportunity to look over the seniority roster of laborers at Corbin shops. Inasmuch as this was an oversight on the part of the clerical force in the master mechanic's office at Corbin when preparing the laborers' roster, and since there is nothing in the agreement which provides that the seniority of an employe who is left off the roster thru error could not be restored thereafter, we feel it would be most unfair to take away from each of them eighteen or more years of accumulated seniority just because someone else made a mistake. If the name of a man (belonging to another craft, who had in no manner established seniority in a given craft) were purposely or inadvertently placed on a seniority roster and the error went unnoticed, certainly no one would attempt to say that Rule 12 (f) established that seniority as being valid. Conversely, an error of omission—not **dating**—can in no manner serve to deprive a man of his rights, legally established. We trust that this Honorable Board will view the case in like manner and after consideration of the circumstances deny the request of the employes that the names of these men be removed from the roster.

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 evidence of record, in light of the relevant provisions of the controlling agreement, supports the following conclusions: that all of the employes named in the claim were formerly employed as laborers at Corbin, Kentucky; that they acquired seniority rights as laborers at this point; that they retained these seniority rights as laborers after they moved to higher-rated positions as mechanics or mechanic helpers; that their names were inadvertently and erroneously omitted from the labor seniority roster for a period of two years or more; that their names were restored to the labor seniority roster on January 1, 1942; that this restoration by the carrier was made under the agreement with the maintenance of way employes effective October 1, 1938, prior to the negotiation of the present agreement with the Firemen and Oilers effective June 1, 1942; that the then-controlling agreement of 1938 provided that "any **dating** (emphasis supplied) which remains unchanged after two years shall not be open to question thereafter"; that **this provision does not expressly cover the outright omission of names, through inadvertence or error, from the seniority roster posted on any given date; that a rule of this character, which might deprive employes of acquired property rights, should be strictly construed; that the restoration of these names to the labor seniority roster on January 1, 1942 did not constitute arbitrary action on the part of the carrier; and that the retention of these names on the labor seniority roster will, in the circumstances of this proceeding, produce a just result.**

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 24th day of March, 1944.