

Award No. 1114

Docket No. 1060

2-CB&Q-EW-'46

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Sidney St. F. Thaxter when award was rendered.

PARTIES TO DISPUTE:

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

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: That Class "C" Lineman W. A. Anderson was entitled to be assigned instead of Class "C" Lineman R. R. McHenry to Class "B" bulletin No. 39 position dated November 30, 1944, at Greybull, Wyoming, and accordingly reimbursed for any loss of wages suffered due to this improper assignment.

EMPLOYEES' STATEMENT OF FACTS: 1. H. N. Peterson, regularly assigned Division Lineman at Greybull, Wyoming, became ill and asked to be relieved from active duty.

2. Bulletin No. 39, dated November 30, 1944, advertising this vacancy, was issued to the employes of the telephone and telegraph department.

3. R. R. McHenry was employed in Class E on July 23, 1928, progressed to Class D on December 1, 1928, then to Class C on September 1, 1936, and assigned to the Class B position on or about December 13, 1944.

4. W. A. Anderson was employed in Class D on July 24, 1928, and was given a corresponding date in Class E, and from Class D he progressed to Class C on September 1, 1936.

5. The service status of Linemen McHenry and Anderson are affirmed by the June 1, 1940 seniority roster, submitted as Exhibit No. 1.

POSITION OF EMPLOYEES: Mr. Anderson was given a Class E date as of the first day he worked for the company in Class D. The reason he was given this date in Class E was to meet the provisions of Rule 11, paragraph B.

Rule 11, Par. B.

"Employees entering the service as linemen or groundmen shall be given corresponding dates in all lower classes."

Bulletin No. 39 (Exhibit 2) discloses that it was issued on November 30, 1944. Assignment showing those who bid (Exhibit 3) was dated December 13, 1944, which showed that Mr. McHenry and Mr. Anderson both have a Class C date of September 1, 1936.

The order in which a man's name appeared was determined by his Class E seniority, altho in Mr. Anderson's case he never worked in that class.

Mr. Anderson worked as a Class D employe for the period from July 24, 1928, until December 1, 1928, longer than Mr. McHenry, which beyond question makes him the oldest Class D man of the two.

in the performance of all other service generally recognized as linemen's work, under the direction of a lineman.

(e) A helper is an employee assigned to help other employees enumerated herein."

Analyzing Rules 11(b) and 3 together, it will be found that an individual who enters service as a Class A lineman, concurrently establishes seniority in the A, B, C, D and E groups. For verification see carrier's Exhibit 6(a)—R. F. Allender, seventh from the last at Page 1, and H. W. Easley, last name on the same page. Conversely, an employe entering service as a Class B lineman establishes corresponding seniority dates in the Class C, D and E groups. This procedure, inversely followed, proceeds from class to class until the last establishment of multiple seniority is reached, which is the case of an individual employed as a groundman (Class D) establishing corresponding seniority as a helper in the Class E group. To give Rule 11(b) the meaning petitioner contends for, it would have to be rewritten so as to read:

"Employes entering the service as linemen, groundmen or helpers shall be given corresponding dates in all higher classes."

(Underscored language substituted or added.)

The Board is not clothed with authority to rewrite the rule which the parties made for themselves under the processes of the amended Railway Labor Act.

The foregoing, by unmistakable implication, is further supported by the provisions of Rule 13(a) which read:

"Employees advancing from one occupation to another, as covered in Rule 1, will retain and continue to accumulate seniority in the class from which advanced."

In the light of the record, respondent carrier respectfully asserts that the rules of the collective agreement controlling in this issue support in every respect the contentions of carrier and deny contentions of petitioner.

CONCLUSION

The respondent to this petition has attempted to limit the argument and evidence submitted, insofar as was possible considering the character of the dispute, to pertinent details thought essential to the rendition of an Award based upon the rules of the collective agreement, as such rules confer rights or impose obligations upon the respective parties. Viewing the evidence thus submitted in an impersonal, unprejudiced light, keeping in mind that both of the individuals involved have long been in the carrier's service, with little if anything to distinguish between them as to relative ability, it is submitted that the evidence adduced presupposes the adoption of findings holding that the claim is without merit and the issuance of an award denying the claim in its entirety.

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.

Rule 3 provides for a classification of employes into five groups, A, B, C, D and E. There is no express provision of the rules which requires the carrier in filling a vacancy or a new position to give preference to the senior qualified

employee in the next lower group and there is nothing in the agreement which by implication gives support to such a contention. That the carrier has ordinarily assigned such a position to the employee with highest seniority in the lower class, when no bid is received from any employee in the higher class, does not mean that the carrier must do so in the absence of a consistent practice acquiesced in by both parties indicating that such employee is entitled to the assignment as a matter of right. There has been no such practice in this instance.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: (Sgd.) J. L. Mindling
Secretary

Dated at Chicago, Illinois, this 5th day of March, 1946.