

Award No. 1993

Docket No. 1788

2-MP-MA-'55

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee J. Glenn Donaldson when the award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 2, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. (Machinists)**

MISSOURI PACIFIC RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES: (1) That under the current agreement, Carrier was in violation of Rule 16(b) when they denied request of employes to strike name of E. E. Dent from seniority roster of Machinists at Osawatomie, Kansas.

(2) That accordingly the Carrier be instructed to comply with Rule 16 (b) of controlling agreement and strike name of E. E. Dent from Machinists seniority roster at Osawatomie, Kansas under provisions of the controlling agreement.

EMPLOYEES' STATEMENT OF FACTS: Mr. Eldon E. Dent entered service of carrier as machinist at Osawatomie, Kansas, on August 19, 1948 and was subsequently promoted to supervisor. Mr. Dent was relieved of his supervisory duties at Osawatomie on January 1, 1949. Mr. Dent worked as machinist at Osawatomie until June 1, 1950 when he was transferred to Houston, Texas as a supervisor for the International Great Northern Railroad which carrier is not a party signatory to agreement effective, September 1, 1949 between System Federation No. 2, Railway Employees' Dept., A. F. of L., and Missouri Pacific Railroad Company.

POSITION OF EMPLOYEES: It is submitted that Mr. E. E. Dent, the party in question, did not comply with Rule 16(b) of the current agreement reading as follows:—

“An employe absent on leave who engages in other employment will lose his seniority, unless special provisions shall have been made therefor by the proper official and committee representing his craft.

Since the party in question (Mr. Dent) made no provisions to protect his seniority under provisions of the aforesaid Rule 16(b), it is the position of the employes that Mr. Dent's name be removed from the seniority roster of machinists at Osawatomie, Kansas.

cepted a position of foreman on the I-GN at Houston. Thus he left Osawatomie as a foreman and accepted the I-GN position as a foreman. As has been set forth in paragraph 4 above, Rule 10(i) of the mechanical supervisors' agreement provides for the retention of seniority under these circumstances, just as Rule 25 (d) of the shop crafts' agreement provided for retention of Mr. Dent's seniority as a machinist when he was promoted to the supervisory position of roundhouse foreman at Osawatomie, effective January 1, 1949.

The organization's request that Mr. Dent's name be removed from the seniority roster of machinists at Osawatomie, Kansas, should be denied.

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.

Mr. Dent, the subject of this dispute, established a seniority date of August 19, 1948, as machinist at Osawatomie, Kansas, while in the employ of the Missouri Pacific Railroad Company. It is the organization's attempt to cause the striking of his name from such seniority roster which results in this controversy. Mr. Dent was given notice of the pendency of this case and took advantage of the opportunity to appear before the Board in defense of his contention, namely, that he is entitled to retain his seniority as a machinist on the Missouri Pacific Railroad at the point previously noted.

Subsequently and on January 1, 1949, Mr. Dent was promoted to the position of Assistant Night Roundhouse Foreman at the same point, a supervisory position subject to carrier's agreement with The American Railway Supervisors' Association. It is undisputed that at this stage of developments, Mr. Dent's seniority remained inviolate because of Rule 25(d) of the Shop Crafts' Agreement, providing:

“(d) Men transferred or promoted by the company to positions as supervisors or other official capacity will retain their home point seniority unimpaired so long as continuity of service is unbroken.”

Emphasis is supplied, *supra*, to a phrase which will be of special application in the discussion following:

Later, Dent was displaced from his supervisory position by exercise of seniority on the part of another, and he thereupon placed himself back on the position of machinist at Osawatomie. On June 1, 1950, he was offered and accepted a position as foreman in the Mechanical Department of the International Great Northern Railroad, a subsidiary of the Missouri Pacific Railroad and a part of the Missouri Pacific Lines in Texas. Supervisory positions on the I-GN subsidiary are not subject to any collective bargaining agreement.

The basic question in this dispute is whether or not the shift to a subsidiary line, a part of the over-all Missouri Pacific System, constitutes a break in Mr. Dent's continuity of service within the meaning of Rule 25 (d) of the Shop Crafts' Agreement. We are compelled to answer the question in the affirmative.

The fact that the several lines which constitute the Missouri Pacific System have corporate ties and operate under a common receiver and com-

mon operating officers has no bearing upon their industrial labor relations. Such relationships are governed by separate certifications of the National Mediation Board and contracts are negotiated by different organizations or different System Federation units. Our attention has been called to no rule of reciprocity which would constitute a bridge between the different organizations on the several lines in matters such as the one before us. His transfer of employment to the I-GN broke his continuity of service to the Missouri Pacific as completely as if he had gone to the Boston and Maine or to the Great Western Sugar Company.

What rights Mr. Dent has as a machinist at Osawatomie must be found in the parent company's agreement of September 1, 1949, with System Federation No. 2, Railway Employees' Department (Mechanical Section). Transfer or promotion by the company, within the meaning of Rule 25 (d), can only refer to the Missouri Pacific Railroad Company, signator to the agreement in question.

Rule 16 (a), relating to leaves of absences for a limited time, would not seem contemplated for use under circumstances such as are present in this case. Rule 16 (b) cannot support Mr. Dent's contention as special provision for his absence was not made therefor by the proper official and committee representing his craft as required thereunder.

Rule 10 (c) of carrier's agreement with the American Railway Supervisors' Association has bearing only upon the seniority status of employes subject to that agreement. The rule is suggestive of what might have been negotiated with the machinists but which was not done. That Mr. Dent could hereafter come back to the parent company as a supervisor is not to say that he has a right to return as a machinist.

The question then arises,—is the organization estopped to now question Mr. Dent's seniority status for reason that his name and seniority date have appeared upon the seniority roster of machinists at Osawatomie annually as late as January 1, 1955?

Rule 25 (c) provides in its pertinent parts, as follows:

"Separate seniority lists will be compiled by the Shop Superintendent and/or Master Mechanic as of January first and July first of each year for each craft and seniority subdivision thereof as listed hereunder. Seniority dates shall be considered permanently established if not protested in writing within thirty (30) days from time of second posting. Seniority rosters will be approved by Shop Superintendent and/or Master Mechanic and local committee, and copies thereof will be furnished the local and general committees. * * *"

Mr. Dent entered upon duties with the I-GN June 2, 1950. Seniority rosters were posted annually (rather than semi-annually as provided by the rule apparently by mutual consent) on January 7, 1951 and 1952, and carried Mr. Dent's name and seniority date. The rosters were subscribed by the local chairman. The organization did not make written protest to the same until May 15, 1952, approximately three and one-half months after the thirty day period specified for protest.

The decisive question here involved is not the date of Mr. Dent's seniority, but whether or not he rates seniority at all as a machinist. Under the rule the time limit for protest relates only to the seniority date and it does not encompass the broader issue above-expressed, which is not barred, unless by action of the local chairman in approving the rosters. It should be noted that the Rule calls for approval of the seniority rosters by the local committee, but assuming that the local chairman had such power, can he intentionally or inadvertently ignore the express provisions of the agreement running contra to his action? We find that he cannot do so. His approval must have some rule basis; the agreement delineates his scope of authority. He can-

not create rights where none existed as we have previously found to be the case herein. That such approval was given through inadvertence is best evidenced by the fact that the local chairman continued to subscribe his name in approval of seniority rosters carrying Mr. Dent's name even after the dispute was lodged with this Board by the president of his organization.

AWARD

Claim sustained and the carrier is directed to strike the name of E. E. Dent from the machinists' seniority roster at Osawatomie, Kansas.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 18th day of October, 1955.