

Award No. 3375
Docket No. 3102-I
2-UP-I-'59

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

PARTIES TO DISPUTE:

UNION PACIFIC RAILROAD COMPANY

OSCAR G. JENSEN, CARMAN-UPHOLSTERER

DISPUTE: CLAIM OF CARRIER:

Claim of Union Pacific Railroad Company that seniority date of September 18, 1941, is the proper seniority date of Oscar G. Jensen, Carman-Upholsterer, Omaha Shops, which date was accorded him after he had completed four years of railroad work at the trade as prescribed by the qualification rule of the controlling agreement.

CARRIER'S STATEMENT OF FACTS: Oscar G. Jensen was first employed by this carrier on December 16, 1918, as an engine cleaner at Council Bluffs, Iowa. He resigned from this employment on March 11, 1919.

Jensen was again employed by the carrier on March 11, 1935, as an upholsterer. In his application for employment form, he listed the following record of previous employment:

From	To	Employer	Position Held
November, 1922	April, 1930	O&W Furniture	Upholsterer
April, 1930	August, 1931	Blackstone Hotel	"
August, 1931	June, 1934	Odd Jobs	Not Shown
June, 1934	December, 1934	Engdahl Top & Body	Upholsterer
December, 1934	January, 1935	O&W Furniture	"

It will be noted that Jensen did not list, and he did not have, any prior experience in the railroad industry as a carman-upholsterer.

Except for periods when he was furloughed account reductions in force, Jensen worked as a carman-upholsterer until the present time and is presently so employed.

If some dissatisfaction resulted from the original interpretation, there was procedure under the Railway Labor Act which the carrier and union could follow, which neither chose to do. What we particularly condemn is attempting to change the employee's status by an organization which did not in truth represent him, and without the affected employee's participation. Protection of this employee's seniority status should have been provided. The arbitrariness and injustice of the action taken by the carrier and the union gnawes at one's conscience.

This employee's position has merit. Your sincere consideration of this matter is invoked.

FINDINGS: The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Parties to said dispute were given due notice of hearing thereon.

This dispute has been progressed here by the Carrier under its Statement of Claim asserting that the date of September 18, 1941 is the proper seniority date of Oscar G. Jensen, Carman-Upholsterer, Omaha Shops. It is Jensen's position that his proper seniority date is March 11, 1935. Hearing has been held and both parties were represented thereat by counsel; Jensen appeared personally.

The record discloses that Mr. Jensen was employed by the Carrier as a carman-upholsterer on March 11, 1935. At that time he had had no prior experience as a carman-upholsterer. He was shown on the 1936, 1937, 1938 and 1939 seniority rosters as having a carman-upholsterer's date of March 11, 1935.

We find that the Carrier was in error in according Jensen a seniority date of March 11, 1935 as a carman-upholsterer because at that time he did not have the requisite qualification prescribed in Rule 133, namely, "four years' practical experience at carmen's work . . ." The other qualification prescribed in Rule 133, i.e., apprenticeship, is not here involved.

Jensen's experience as an upholsterer in outside industry at the time of his employment in 1935 has no bearing upon the requisite qualification under the above rule.

It is shown in the record that the Carmen's Organization's protest of Jensen's seniority date of March 11, 1935 as a carman upholsterer ultimately led to a conference between the Carmen's Organization and the Carrier, which conference resulted in the correcting of Jensen's seniority date in accordance with an understanding reached between the Carmen's Organization and the Carrier, which understanding is shown in the record as Carrier's Exhibits A and B. As a result of this understanding, Jensen's employment in 1935 was, in effect, treated as being under Rule 154 and, after he had acquired four years' practical experience at carmen's work (1160 days), he was accorded a seniority date of September 18, 1941. He holds this date

at the present time and we find it to be proper and correct under the applicable agreement provisions. The adjustment in Jensen's seniority date was prospective in its application. It was not retroactive and had no effect on his employment by the Carrier under Rule 154.

In reaching the foregoing findings, we have carefully considered all of the arguments and contentions made in the submissions filed on behalf of Jensen, but we find such arguments and contentions to be without merit. Many, if not all, of the arguments advanced on Jensen's behalf are answered in *Edelstein v. Duluth, Missabe & Iron Range Ry. Co.*, 226 Minn. 508, 31 N.W. 2d 465. We find that Jensen's seniority date of March 11, 1935, was erroneous and that it was properly changed to September 18, 1941.

AWARD

Claim of Carrier sustained and claim of Jensen denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 16th day of December, 1959.