

Award No. 4012
Docket No. 3266
2-EJ&E-CM-'62

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Lloyd H. Bailer when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 88, RAILWAY EMPLOYEES'
DEPARTMENT, A. F. of L. — C. I. O. (Carmen)**

ELGIN, JOLIET & EASTERN RAILWAY COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

1. That the Carrier violated the current agreement when they:

(A) Improperly continue to carry Freight Service Engineer John Losik on the Carmen Helper's seniority roster.

(B) Refused to remove the name of Freight Service Engineer John Losik from the Carmen Helper's seniority roster, in violation of Rule 20 of the current working agreement.

2. That accordingly, the Carrier be ordered to remove the name of John Losik from the Carmen Helper's seniority roster, as he has not been a Carman Helper since August 19th, 1953.

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.

Parties to said dispute waived right of appearance at hearing thereon.

By Award 3877 we remanded this claim to the parties for the development of additional facts.

On August 31, 1951 John Losik entered the Carrier's service as a Carman Helper in the Maintenance of Equipment Department at Gary, Indiana. On September 4, 1951 he was assigned to the position of Temporary Carman. On August 19, 1953 Losik was promoted to a supervisory position as Freight Service Engineer in the Carrier's Industrial Engineering Department. This

position is outside the scope of the Carmen's Agreement. Nevertheless the Carrier continued to list Losik on the seniority roster of Carman Helpers. The Organization contends he should be removed from this roster. It is asserted that Losik is not entitled to retain seniority under the Carmen's Agreement, due to his having moved to the subject position outside the Agreement.

There is no Agreement which declares that a seniority employee who is transferred or promoted to an exempt position with the Carrier thereby loses his seniority. Rule 20, which is cited in the claim, does not bear upon this question. That rule deals with transfers from point to point in positions covered by the Agreement. Rule 21 provides that an employee on leave of absence "... who engages in other employment will lose his seniority unless special provisions shall have been made therefor by the proper officials." An employee who is promoted to a position outside the Agreement is not on a leave of absence, however.

Rule 19 provides that mechanics accepting promotion as foremen will retain their seniority rights as mechanics at the point employed. Losik was working as a temporary mechanic when he was promoted to an exempt supervisory position but he did not hold seniority as a mechanic (Carman) at the time of his promotion and the position to which he was promoted was not that of foreman. There is no agreement rule, in fact, which expressly declares that employees similarly situated to Losik shall retain their seniority subsequent to being promoted out of the bargaining unit.

A conclusion that Losik lost his seniority by virtue of having accepted promotion under the confronting facts necessarily would be based on the inference that because the Agreement does not expressly provide for retention of seniority under these facts, although it does so provide for mechanics promoted to foremen, the mutual intent of the parties was that an employee so situated as Losik thereby becomes divested of his seniority.

Seniority is a valuable right that is not to be lightly disregarded. Once acquired by an employee, we do not think it should be taken away from him except under conditions that are expressly set forth in the Agreement under which such seniority was obtained. We do not think that silence of the Agreement regarding loss of seniority under the involved circumstances is sufficient basis for voiding an employee's seniority. Moreover, we do not think the existence of a specific provision for retention of seniority by mechanics promoted to foremen is sufficient to warrant the conclusion that Carman Helpers promoted to exempt supervisory positions other than foremen must lose their seniority. The customary order of job progression is from helper to mechanic to foreman. It is at least as likely that the parties did not contemplate a different order of progression as it is that they intended seniority to be lost under any different order of progression from jobs inside to those outside the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of SECOND DIVISION

ATTEST: Harry J. Sassaman
Executive Secretary

Dated at Chicago, Illinois, this 26th day of June 1962.

DISSENT OF LABOR MEMBERS TO AWARD 4012

The statement of the majority that "The customary order of job progression is from helper to mechanic to foreman" is not true. The prescribed order of job progression under the terms of the governing agreement is from apprentice to mechanic to foreman. (See Rules 40 and 19 respectively).

It is true, as conceded by the majority, that "There is no agreement rule, in fact, which expressly declares that employes similarly situated to Losik shall retain their seniority subsequent to being promoted out of the bargaining unit." This being true there is no justification for this denial award.

C. E. Bagwell

T. E. Losey

E. J. McDermott

R. E. Stenzinger

James B. Zink