

Award No. 4848

Docket No. 4732

2-EL-CM-'66

NATIONAL RAILROAD ADJUSTMENT BOARD

SECOND DIVISION

The Second Division consisted of the regular members and in addition Referee Howard A. Johnson when award was rendered.

PARTIES TO DISPUTE:

**SYSTEM FEDERATION NO. 100, RAILWAY EMPLOYEES'
DEPARTMENT, AFL-CIO (Carmen)**

ERIE LACKAWANNA RAILROAD COMPANY

DISPUTE: CLAIM OF EMPLOYEES:

That the Carrier is violating the controlling Agreement and Rules 26 and 97 thereof, by refusing to place Carman J. T. Zadrusky on the mechanic seniority rosters at Hoboken, N. J. and Croxton, N. J.

That the Carrier be ordered to place J. T. Zadrusky in his proper position on the mechanic seniority rosters at Hoboken, N. J. as of 1-9-1956, and Croxton, N. J. as of 3-5-1962.

EMPLOYEES' STATEMENT OF FACTS: Carman J. T. Zadrusky served his apprenticeship at the Keyser Valley Shops at Scranton, Pa., from 9-2-1924 thru 10-6-1928 and was placed on the mechanics' roster 10-7-1928. He resigned at these shops on 4-15-1931 and entered business of his own. On January 5, 1956, Mr. Zadrusky contacted Personnel Director Otto Sturm at Scranton, Pa., and requested a job as mechanic. There were no open jobs for a mechanic, so Mr. Sturm sent him to Hoboken, N. J. on vacant job of coach cleaner. He worked only a short period of time as coach cleaner and was then placed on a job as mechanic at the Hoboken Piggy-Back Service tracks on January 9, 1956.

Mr. Zadrusky was not placed on this Hoboken roster as a mechanic, he was shown as a promoted coach cleaner. He appealed this matter to the local chairman, who being unable to correct this seniority, appealed the matter to the general chairman, who in turn, checked the personal record of Carman Zadrusky at the railroad office in Scranton in September, 1960, and found the foregoing mechanic record of Carman Zadrusky to be correct as shown. Assistant Personnel Director Heinerick agreed to make correction at Hoboken.

On different occasions, the local chairman and the general chairman have requested that Carman Zadrusky's seniority be adjusted and that he be placed on the mechanics' roster at Hoboken, N. J. and Croxton, N. J. freight

Based upon the foregoing facts, reasons and authorities cited, carrier submits that this claim should either be dismissed or denied account no rule violation.

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.

On September 2, 1928, Claimant was placed on the roster of mechanics in the service of the DL&W Railroad at its Keyser Valley Shops at Scranton, Pennsylvania, but resigned on April 15, 1931 to engage in business.

On January 5, 1956, he was again employed by that Carrier as a coach cleaner at Hoboken, New Jersey; on January 9, 1956, he was assigned to a temporary position as car inspector at Harrison, New Jersey, and on March 19, 1956, and again on April 23, 1956, he was placed on a vacant position as car inspector at Hoboken, New Jersey. On May 16, 1956, he reported off because of illness, and did not report back for work until March 23, 1960.

On the latter date he again reported for work at Hoboken and was placed in a vacant position of car inspector, and on April 19, 1961, was placed in another such position there.

Each year Claimant's seniority has appeared on the Hoboken coach cleaners' roster as January 5, 1956, and on the Hoboken carmen's register as January 9, 1956 "provisional", on the basis that he was an upgraded coach cleaner and that his assignment as a carman was only temporary. Seniority in the employes' crafts is limited to the point at which employed under Rule 26, which further provides that "The seniority lists will be open to inspection and copy will be furnished the Local Committee".

On October 17, 1960, the merger of the DL&W and Erie Railroads into the Erie-Lackawanna Railroad Company became effective, and on August 10, 1961, the consolidated company entered into an implementing agreement with System Federation No. 78 (DL&W), and System Federation No. 100 (Erie), Railway Employees' Department, AFL-CIO, section (i) of which provided as follows:

"(i) The agreed to seniority datings carried on the Erie-Lackawanna rosters currently in effect as of the date of the consolidation of the rosters will be accepted. Such datings will not be open to protest. The only protest which will be entertained as to any dating on the consolidated roster will be typographical errors arising in preparing and dovetailing same. Proper correction will be made immediately upon discovery of such errors. Where two or more employes have the same seniority date, their respective positions on the seniority roster will be determined by lot."

In the 1962 DL&W rosters at Hoboken, Claimant's coach cleaner seniority again appeared as January 5, 1956, and his carman seniority as January 9, 1956 "provisional", as they had done since 1957.

As a result of the merger Claimant's car inspector's position at Hoboken was abolished on March 3, 1961. Because of his provisional status in the carmen's seniority list he was not able to hold a position in the merger unit; but on March 5, 1962, he was assigned as a carman at Croxton which is included in the combined Jersey City general carmen's roster. He then protested his provisional or up-graded status, and the Local Committee of Division 100 (Erie), which has jurisdiction of the Jersey City general carmen's roster, agreed that he was entitled to carmen's seniority on that roster only as of July 5, 1962, rather than March 5, 1962 as claimed.

Meantime on June 29, 1962, the General Chairman had made claim to the Division Car Foreman and had progressed it to Vice-President Labor Relations Diegtel, who on December 17, 1962, denied the Claim. The denial was not appealed to this Board. Instead the Local Chairman renewed the claim with the Division Car Foreman, and progressed it to the Director of Labor Relations, and because it was not again denied by the latter within sixty days, the General Chairman on August 3, 1963, wrote to the Vice-President of Labor Relations and claimed a default allowance of the claim under Article V (which he called Article VA) of the National Agreement of August 21, 1954.

When on October 10, 1963, the Vice-President Labor Relations reminded him that the claim had been denied on November 17, 1962, the General Chairman replied in a letter of October 15, 1963:

"Please be advised that your letters of November 14 and December 17, 1962, do not apply to this case. The claim now before you was re-submitted by Local Chairman Ferrara of Hoboken to Division Car Foreman Mulaney on January 8, 1963, and has been progressed in accordance with the controlling agreement."

But as this Division said in Award No. 3777:

"After Carrier had denied those claims the Local Chairman could not escape such denial by re-submission of the identical claims and require carrier to deny them a second time, therefore on failure to appeal within 60 days from the receipt of notice of denial, under the provisions of the August 21, 1954 Agreement 'the matter must be considered closed' as to the three claims."

This Board therefore has no jurisdiction to consider the Claim.

While thus the merits cannot now be determined, it might be noted that although the Claimant comes under the System Federation No. 78 Agreement, System Federation No. 100, which has jurisdiction over the Jersey City general carmen's roster, has agreed that his proper carmen's seniority date there is July 5, 1962, instead of March 5, 1962 as claimed.

With reference to Claimant's seniority in 1956, prior to the rail merger, it was frozen by the implementing agreement of August 10, 1961, at least as to date, and certainly any attempt to change it otherwise can be only by tri-party agreement.

AWARD

Claim dismissed without prejudice.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of **SECOND DIVISION**

ATTEST: Charles C. McCarthy
Executive Secretary

Dated at Chicago, Illinois, this 11th day of March, 1966.