

The Second Division consisted of the regular members and in addition Referee Irwin M. Lieberman when award was rendered.

Parties to Dispute: (System Federation No. 41, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Firemen & Oilers)
(
(The Chesapeake and Ohio Railway Company
((Chesapeake District)

Dispute: Claim of Employees:

1. That the Carrier improperly altered the seniority date of Thomas Ellis Jackson.
2. That accordingly, the Carrier be ordered to restore Thomas Ellis Jackson with his proper seniority date of August 18, 1948.

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.

Claimant was employed as a Fireman and Oiler on August 18, 1948. While on furlough, on February 15, 1952, he enlisted in the Military Service, from which he retired on October 1, 1970. On November 5, 1968 Claimant, and a number of other employes (nineteen), received registered letters asking them to fill a temporary vacancy; Claimant did not respond to that letter but his wife telephoned Carrier and indicated that he was in military service, would remain in service until 1970 and wished to protect his seniority. On October 7, 1970 Claimant was recalled to service and worked until the fall of 1971 when his job was abolished with the closing of the power plant where he was employed. During this entire period, from 1948 to 1971, Claimant was carried on the appropriate seniority roster with a date of August 18, 1948.

The issue was joined when Carrier, in negotiations for proper arrangements in closing the power plant, stated that it had made an error in Claimant's seniority and the date should be October 7, 1970 when he was reemployed. At stake was a very substantial difference in possible severance pay for Claimant. In support of its position Carrier relies on a number of arguments: Claimant, by having voluntarily remained in the military service for more than eighteen years, forfeited his 1948 seniority date; Claimant lost his reemployment rights under the Selective Service Act of 1967; through oversight Claimant's name was not removed from the seniority roster in 1968; Claimant was considered to be on leave of absence during his military service and had made no provisions for "other employment" as provided in Rule 32 relating to Leave of Absence; Claimant was a new employee when he returned to work on October 7, 1970.

Although Carrier is quite correct in its evaluation of the Selective Service Act and the reemployment rights provided therein, it does not appear to have any relevance to the dispute herein. The sole issue is whether, under the applicable Agreement, Claimant's original seniority date was terminated. Both parties agree that Claimant was in a furloughed status when he entered military service. Whether he remained in service or secured other employment is irrelevant to the issue; the question is whether the eighteen year hiatus changed Claimant's seniority position. There is no evidence in the record that Carrier at any time sought to terminate or otherwise change Claimant's status. Nor is there any factual basis demonstrated which would justify making such change, thus excusing Carrier's "oversight". The November 5, 1968 letter to a group of employees and Claimant's lack of acceptance does not constitute abandonment of his seniority, in view of the temporary nature of the position. There is no factual basis for the proposition that Claimant was on leave of absence rather than on furlough; this is further evident in that Carrier did not even know that Claimant was in military service until 1968, when informed by his wife. Our examination of the Rules indicates that seniority may be retained by a furloughed employee indefinitely, as long as he complies with the terms of Rule 30, which provides:

"Rule 30 - Retention of Seniority After Reduction In Force

When employees laid off by reason of force reduction desire to retain their seniority rights, they must file their address with the officer notifying them of the reduction, and notify the same, by letter or other written matter, of any change in address. Failure of the employee to do so, or to return to the service in reasonable time after being notified to return at the last address the employee had given, will forfeit all seniority rights."

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There is nothing to indicate that Claimant forfeited his seniority; his status is governed by the Agreement, not the Selective Service Act.

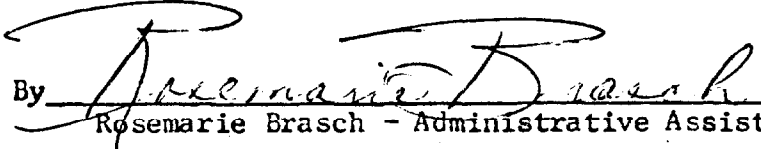
A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By


Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 17th day of April, 1974.