

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISIONAward No. 7077
Docket No. 6953-I
2-ICG-I-'76

The Second Division consisted of the regular members and in addition Referee Martin I. Rose when award was rendered.

Parties to Dispute: (Mr. R. E. Mawhinnie
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(The Illinois Central Gulf Railroad

Dispute: Claim of Employees:

We are appealing to the National Railroad Adjustment Board for a ruling pertaining to the following case, regarding the way that we (the present supervisors) are to be placed on the ARCS Seniority Roster.

Exhibit 1 & 2	Letters to Mr. R. G. Richter, Manager of Labor Relations for the Illinois Central Gulf Railroad and Mr. T. V. Neihoff, General Chairman - S.T., System Council 10, I.B.E.W., stating our case against their agreement of how we were to be placed on the ARCS Seniority Roster.
Exhibit 3	Mr. R. G. Richter's reply to Exhibit 1.
Exhibit 4	Mr. T. V. Neihoff's reply to Exhibit 2.
Exhibit 5	Mr. R. G. Richter's and Mr. T. V. Neihoff's letter of agreement, which we are protesting.
Exhibit 6	Additional agreement covering the supervisors exercising seniority rights.
Exhibit 7 & 8	Memorandum of agreement between the Illinois Central Gulf Railroad and the employees represented by the I.B.E.W.
Exhibit 9	Copy of ARCS Department Seniority Roster.

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.

Petitioners hold supervisory positions in the Carrier's Automatic Revenue Collection Service (ARCS) Department. On May 2, 1975, they wrote Carrier's Manager of Labor Relations that they objected to the provision of the agreement relating to the seniority of supervisors in the ARCS Department signed by him and the International Brotherhood of Electrical Workers General Chairman on April 25, 1975 which placed them at the bottom of the ARCS Seniority Roster with a seniority date of April 25, 1975. They asserted that such seniority listing was unfair and discriminatory in that they were denied service credit from the time they had started in the department as technicians and worked through senior technician to supervisory level, and that this departmental service and their membership in the Brotherhood Local when the agreement covering the other employees in the ARCS Department was consummated on April 25, 1975 by the Carrier and the Brotherhood entitled them to coverage of the provision of that agreement to the effect that covered employees will be listed on the department seniority roster in accordance with date of hire in the ARCS department. They wrote that a fair solution of the problem required omission of the objectionable provision from the agreement and placing them on the on the ARCS Department Seniority Roster in accordance date of hire in the department.

By letter dated June 4, 1975, the Manager of Labor Relations rejected the Petitioner's objections and informed them, that inasmuch as they were on management positions, "neither the provisions of the 'B' working agreement nor the provisions of the agreement that was signed on April 25, 1975 pertain to you."

On this appeal, Petitioners request a ruling "regarding the way that we (the present supervisors) are to be placed on the ARCS Seniority Roster." Carrier contends that the applicable agreement was not violated, that Petitioners are requesting this Board to amend "the agreements with respect to their seniority date," and that such a request is beyond the jurisdiction of the Board.

No contract violation is claimed in this case. The dispute here concerns Petitioners claim that the provision of the April 25, 1975 supervisors seniority agreement placing them at the bottom of the ARCS Seniority Roster with a seniority date of April 25, 1975 is unfair and discriminatory and that they should be given a seniority in accordance with date of hire in the department.

It is hornbook principle that seniority rights of employees exist only by virtue of agreement and that in the absence of agreement there are no seniority rights. Thus, Petitioners' seniority rights must stem from the agreement which they dispute.

Aside from the question of fairness and discrimination, the claim here contemplates striking the disputed seniority provision from the applicable agreement and providing Petitioners with seniority status as of date of hire in the ARCS Department. Such a result constitutes modification of the April 25, 1975 supervisors seniority agreement. As suggested by the Carrier, under the Railway Labor Act, this Board does not have authority to change or modify agreements (Second Division Award 6948). The Act confines our adjudicative functions to disputes "growing. . . out of the interpretation or application of agreements. . . ." Accordingly, we cannot modify the existing agreement relating to seniority of supervisors in the ARCS Department or add to it by giving Petitioners seniority in accordance with date of hire in the department.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest: Executive Secretary
National Railroad Adjustment Board

By Rosemarie Brasch
Rosemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 2nd day of July, 1976.