

The Second Division consisted of the regular members and in addition Referee David P. Twomey when award was rendered.

Parties to Dispute: ( Mary E. McDonald  
( Southern Pacific Transportation Company  
( and  
( System Federation No. 111

Dispute: Claim of Employees:

1. That the Carrier violated the current agreement when, on May 4, 1973, it failed to notify or call Coach Cleaner, Mary E. McDonald, for service in accordance with her seniority.
2. That the Organization violated its statutory duty under Section 2 of the Railway Labor Act by arbitrarily failing to protect Employee McDonald's seniority rights and by arbitrarily failing to process her grievance based on her seniority rights.
3. That accordingly, Carrier and/or Organization be ordered to compensate Coach Cleaner Mary E. McDonald for all time worked by employees junior to her on the seniority roster, and to further make her whole for all employee benefits adversely affected by the Carrier-Organization's actions.

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.

This is a dispute concerning Carrier's alleged failure to recall Claimant, who has a seniority date of March 18, 1944 as a Coach Cleaner at Carrier's Oakland, California, facilities, from furlough in accordance with her relative standing on the seniority roster on or about May 4, 1973. According to the undisputed facts, the reason why Claimant was not recalled to service was because there was a symbol mistakenly placed next to her name on the seniority roster which indicated she was receiving a disability annuity. It is further undisputed that Claimant was not in fact receiving a disability annuity and should have been recalled on or about May 4, 1973. It is also

uncontested that this symbol began appearing next to Claimant's name on the 1963 seniority roster and continued thereafter through the 1974 roster. When this error was discovered, the Claimant was immediately recalled for service and she returned to duty on February 24, 1975. The Claim before us is for compensation for the period from May 4, 1973 to February 24, 1975.

The Carrier contends that the claim filed with the Second Division was not handled on the property of the Carrier in accordance with the agreed-upon procedures established under Rule 38 of the Agreement and as required by Section 3, First (i) of the Railway Labor Act; as amended, and Circular No. 1 of the National Railroad Adjustment Board. Rule 38(d) sets forth an appeal process up to the highest appeals officer designated by the Carrier to hear such appeals. The exhibits of both parties do not show any correspondence indicating an appeal beyond Superintendent W. M. Jones. The Carrier in its Submission contended that the Claim was never appealed to the highest appeals officer designated by the Carrier to hear such appeals. The Employees' Rebuttal contained no denial of this contention nor was evidence offered to show that Rule 38(d) had been complied with. This Board has repeatedly held that what is not denied must be taken as fact. We are compelled on the evidence before us to find that no appeal was taken to the highest appeals officer designated by the Carrier as required by Rule 38(d). Such appeal is not only a procedural prerequisite under the Agreement but is also a jurisdictional prerequisite under Section 3, First (i) and Circular No. 1 of the NRAB. Therefore we must dismiss this claim.

For the reference of the Grievant, it is pointed out that Rule 32 contemplates the possibility of error in the preparation of seniority lists, and Rule 32 sets forth a process including time limits, for the correction of errors: Rule 32 states in pertinent part:

"Seniority rosters will be revised as of July 1, each year, and posted in places accessible to employees affected; list of additions, eliminations, and corrections will be posted as of January 1st each year. Errors in any roster or list to which attention is called within sixty (60) days from date of posting will be corrected. The General Chairman and the Local Committee will each be furnished three copies of such rosters and lists, pertaining to their craft."  
(Emphasis added)

Clearly this rule, through the posting process, places responsibility on the individual employee to check the roster to determine if an error has been made. In the instant case the error was made on the 1963 roster and carried forward for over 10 years without protest or complaint from the Claimant. Rule 32 provides for the posting of seniority rosters and contemplates that affected employees will find any possible errors and call attention to any such errors. No exception to this process is made for employees on lay off. No practice is either alleged or proven that any method other than the posting method has been used in setting forth the seniority roster each year. The Agreement then provides the process for

finding and correcting errors. It is well settled that every employe is charged with knowledge of the contents of the Agreement (See Third Division Award 20086). There is no contractual basis then, where the Claimant has failed to check the duly posted seniority rosters, to sustain the claim in the instant case. Further, this Board has no jurisdiction over a dispute between an employee and his or her Organization.

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 - Administrative Assistant

Dated at Chicago, Illinois, this 30th day of September, 1977.