

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

Parties to Dispute: (System Federation No. 45, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(St. Louis Southwestern Railway Company

Dispute: Claim of Employees:

1. That under the rules of the controlling agreement Carman D. R. Allard was unjustly dealt with when the St. Louis Southwestern Railway Company removed his name from the Carmen's seniority roster at Tyler, Texas.
2. That accordingly Carrier be ordered to restore D. R. Allard's name to the seniority roster at Tyler, Texas, with seniority date in subdivision "B" of June 2, 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 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 waived right of appearance at hearing thereon.

The Claimant, Mr. D. R. Allard, was originally hired as a Carman on November 8, 1945. Due to a 1969 force reduction at Tyler, Texas, he was furloughed as a Carman. On April 2, 1970, while furloughed, he entered train service as a brakeman. On December 15, 1972, he was recalled to service as a Carman and instructed to report for duty within fifteen days or his name would be dropped from the seniority roster. The Claimant endeavored to obtain a leave of absence, as a Carman, in order to continue working as a brakeman, but the Carmen's Organization did not agree. By letter dated January 29, 1973, the General Chairman wrote to Trainmaster Cagle advising, in part, that:

"It is our position that Brother Allard must return and protect his seniority or forfeit his rights as a Class A Carman on the Tyler, Texas seniority roster." (emphasis added)

The Claimant did not return to service as a Carman.

The St. Louis Southwestern Railway Company of Texas and the St. Louis Southwestern Railway Company merged in 1953. The controlling agreements were merged and became effective on November 1, 1953. Prior to the merger the Claimant held seniority in two of the twelve separate seniority subdivisions of the Carmen's Craft, as a Caboose and Freight Car Body Builder with the date of November 8, 1945 and as a Car Inspector with a date of June 2, 1948. The seniority rosters under the 1953 agreement consolidated and reduced the number of subdivisions. Claimant's name appeared as No. 38 on the 1954 consolidated Seniority roster of Other Carmen as "A" 11-8-1945 and "B" 6-2-48. "A" refers to "Prior rights to positions filled from former seniority roster of Caboose and Freight Car Body Builders"; and "B" refers to "Prior rights to positions filled from former seniority roster of Car Inspectors". In 1973 he was No. 7 on this Seniority roster.

The Organization contends that when Claimant Allard did not return, he lost his seniority in Subdivision A and was entitled to retain seniority in Subdivision B. The Organization contends that Second Division Award No. 3255 resolved this dispute involving closely similar facts and the very same parties and rules, and should also be controlling in the instant case. The Organization contends that the Carrier has recognized the validity of the Organization's present position in the case of other shop craft employees in similar situations under identical rules.

The Carrier contends that while preserving rights in the old subdivisions prior to the 1953 Agreement, that Agreement also consolidated and reduced the number of subdivisions; and that of the seven listed subdivisions of the 1953 Agreement, the Claimant held seniority in just Subdivision 4, "Other Carmen". Therefore the Carrier contends that under the clear language of rule 18-4 he forfeited seniority in the subdivision to which he had been recalled, that is subdivision No. 4.

We find that Second Division Award No. 3255, supported by Rule 20-3 as read with Rule 18-4, is controlling in the instant case; and we shall sustain this claim. We are not disposed to disturb a prior Award absent a compelling showing of error. An employee on this property is entitled, until a rule change is properly negotiated and agreed to by the parties, to make a decision to continue working as a brakeman on the expectation that under Award No. 3255 his "B" seniority will continue.

We find that the time limits matter was not properly progressed to this Board.

Form 1
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Award No. 7460
Docket No. 7277
2-SLSW-CM-'78

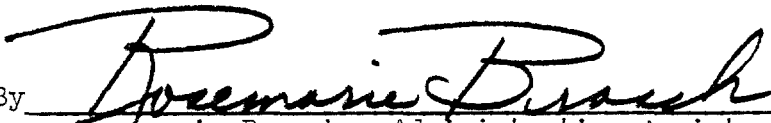
A W A R D

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 10th day of February, 1978.

