

The Second Division consisted of the regular members and in addition Referee Arthur T. Van Wart when award was rendered.

Parties to Dispute: (System Federation No. 16, Railway Employees'
(Department, A. F. of L. - C. I. O.
((Carmen)
(
(Norfolk and Western Railway Company

Dispute: Claim of Employees:

1. That carrier has violated the current working agreement by allowing A. B. Contos a position on the Carmen's (Car Repairers) Seniority Roster at Bellevue, Ohio with seniority date of July 2, 1971.
2. That A. B. Contos' name be placed correctly on the Carmen's (Car Repairers) Seniority Roster at Bellevue, Ohio.

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 employees 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.

The instant dispute involves the allegation that Carrier had improperly placed Carman A. B. Contos on the Carmen's seniority roster at Bellevue, Ohio with a seniority date of July 2, 1971.

Subsequent to said Carman Contos being placed on the seniority roster with a seniority date of June 3, 1971, a fellow Carman, R. A. Myers (seniority date of July 12, 1971), challenged the seniority date of June 3, 1971 for Carman Contos. Carrier reviewed the service record of Mr. Contos in the presence of the Local Committee and corrected the seniority date of Carman Contos to July 2, 1971. Such seniority date appeared on the rosters published in 1972, 1973 and 1974.

It was not until May 29, 1974, more than two and one-half years later, that a protest was filed alleging an improper seniority date for Carman Contos. The grievance thereon was handled up to and including the highest designated officer who denied the grievance by letter dated April 4, 1975.

No further handling was given the subject grievance. However, under date of September 12, 1975, the grievance was reinitiated at the local level and handled through the usual channels and finally appealed to this Board.

Carrier alleges that the seniority date in question was arrived at with full cooperation of the Local Committee, and that the time limit provisions of Section V of the August 21, 1954 Agreement and laches bar consideration of the dispute by this Board. The Employees, to the contrary, allege that the violation is a "continuing" violation and that a grievance can therefore be filed at any time so long as that continuous violation exists.

This Division, in its Award No. 6987 stated:

"This Board has long held that a claim is not a continuous one where it is based on a specific act which occurred on a specific date. While a continuing liability may result, it is settled beyond question that this does not create a continuing claim. (See Third Division Awards 11167, 12984, 15691, 16125, 18667, 19972, 20631.) In this case the date of occurrence was October 22, 1971. The claim was not presented until May 8, 1972. Such a filing was well beyond the time limits."

We find the alleged grievance is based on a specific act, that of establishing a specific seniority date for Carman Contos. It, therefore, does not constitute a continuous claim. Furthermore, we find no justification for the Organization and the aggrieved (Carman Myers), who were well aware of Carman Contos' established seniority date when the seniority roster was posted in 1972, to have delayed handling a grievance until some two and one-half (2-1/2) years later. They slept on their rights.

Time limits legally entered into are binding on the parties. The instant claim is barred and must, therefore, be dismissed.

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 23rd day of June, 1978.