Award No. 8642 Docket No. 8376 2-080-08-181

The Second Division consisted of the regular members and in addition Referee Kay McMurray when award was rendered.

Parties to Dispute:

(Brotherhood Railway Carmen of the United States and Canada
(Chesapeake and Ohio Railway Company

Dispute: Claim of Employes:

- 1. Claim that Carman-Tentative, H. E. Fannin's name was improperly placed on the January 1, 1978 carmen-tentative seniority roster with a date of May 14, 1977 instead of March 10, 1950, in violation of Rules 27 and 31 of the Shop Crafts Agreement and Carmen's Special Rule 177.
- 2. Accordingly, Carman-tentative, H. E. Fannin's name should be restored to the Carmen-tentative Seniority Roster at Russell Terminal with the original date of March 10, 1950.

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, Mr. Fannin, received his original seniority date as a carmantentative on March 10, 1950. He was furloughed on October 3, 1958. The Carrier alleges that he was recalled on December 24, 1965, for a permanent carman-tentative position and failed to report. Accordingly, his name was removed from the seniority roster under Rule 27 which provides that "Those failing to notify of their intention to return or failing to return within a reasonable time will forfeit their seniority on the roster on which called."

In May of 1977 a carman vacancy existed at Russell. Mr. Fannin responded to the recall and was placed on the seniority list as of May 14, 1977.

Claimant challenges that new seniority date. The Organization claims that he was improperly recalled on December 24, 1965, and therefore should have his original seniority date.

The Carrier raises a serious procedural objection, pointing out that the claim was not filed in accordance with the time limit provisions in the contract. In so doing, it relies on Rule 35 of the controlling Agreement, which reads in pertinent part:

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"All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based..."

The record reveals that Claimant returned to service on May 14, 1977 and in June of 1977 had been made aware of his new seniority status by the Foreman. Unfortunately, he waited until March 18, 1978, to inform his Organization of the problem and the grievance was filed on that date, over eight months after the occurrence.

The contract is an agreement between the parties and this Board is constrained by law and practice from any attempt to modify its terms.

Clearly the claim was not filed within the time provided and therefore cannot be considered by the Board.

AWARD

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Second Division

Attest: Executive Secretary

National Railroad Adjustment Board

osemarie Brasch - Administrative Assistant

Dated at Chicago, Illinois, this 4th day of March, 1981.