Form 1 NATIONAL RAILROAD ADJUSTMENT BOARD Award No. 8732
SECOND DIVISION Docket No. 8775-I
2-SOU-I-'81

The Second Division consisted of the regular members and in addition Referee Gilbert H. Vernon when award was rendered.

Parties to Dispute: (Glenn C. Monroe, Petitioner
(Southern Railway Company

Dispute: Claim of Employes:

This case presents a seniority question. The broad issue is whether petitioner Glenn C. Monroe is entitled to 366 days of retroactive seniority at Southern Railway Company's Coster Shop in Knoxville, Tennessee. This issue is governed somewhat by the threshold question of whether the petitioner's seniority is governed by the Student Mechanics Agreement dated March 28, 1974 or by the amendment thereto dated July 15, 1977. The petitioner's position is that he is governed by March 28, 1974 Agreement and that under that Agreement retroactive seniority should attach to the Coster Shop.

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.

On January 5, 1976, the Claimant accepted employment as a Machinist Student Mechanic at Carrier's Chattanooga Diesel Shop at Chattanooga, Tennessee. A short time later, the Claimant asked to be transferred to Knoxville, Tennessee. The request was granted and the transfer was effective April 20, 1976. The Student Mechanic's Agreement requires that a student complete 732 days of training before getting a seniority date as a Machinist. Under situations where no transfer during training has occurred, it is undisputed that a student would get a date 366 days retroactive to the date that the 732 days was completed. However, the seniority date to be given to a Student Mechanic who transfers from his original point of hire and who completes his training at another point is disputed. The seniority date to be given Mr. Monroe is the subject of this case.

Fundamentally, the petitioner argues that the governing agreement in Mr. Monroe's case is the Student Mechanic's Agreement dated March 28, 1974, as amended July 10, 1974. They further argue that when this Agreement is interpreted correctly Mr. Monroe should be given a seniority date at Knoxville that is 366 days retroactive to the date he completed his 732 days training. This argument is developed in detail and the petitioner's position will be examined more closely after a more basic framework of the issue is outlined.

The fundamental position of the Carrier is that an Agreement dated July 15, 1977, is applicable to the question of Mr. Monroe's seniority in that it specifically applies to employees who transfer from their original point of hire and who complete their training after the effective date of the Agreement. The Agreement states in pertinent part:

> "(2) In the event a student mechanic is permitted to transfer while undergoing training during Phase IV of the Student Mechanics Traning program from the point initially employed to another point, whether within or without the same employing officer's jurisdiction, the student mechanic so transferred shall be treated with respect to establishment of seniority as a journeyman in his craft upon successful completion of the total days of training in the following manner:
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> (a) The point initially employed as student mechanic for Phase IV training shall be designated as the employee's home point.
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> (b) Upon completion of 732 creditable days of training (976 creditable days of training for electrical workers), including days of training at the point initially employed for Phase IV training, a student mechanic who is permitted to transfer to a different shop point may establish a retroactive date as journeyman mechanic in his craft at his home point in accordance with Section 5 - Seniority - of the Student Mechanics Agreement, or he may elect to continue to work at the point to which transferred and thereby establish a seniority date as journeyman mechanic in his craft at such point effective with the date of completion of the total creditable days of training.
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> (c) If the student mechanic involved elects to take his retroactive seniority date as journeyman mechanic in his craft at his home point, he will be required to report and protect such seniority at that point within ten (10) days following completion of the total days of training for his craft and will thereby forfeit any rights which he may otherwise have had at the point to which transferred.
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> (d) If the student mechanic elects to continue working at the point to which transferred, he will, of course

"establish a seniority date as journeyman mechanic in his craft effective with the completion of his total days of training and will thereby forfeit any right to a retroactive date at his home point.

EXAMPLE: A carman student mechanic, after completing 300 creditable days of training at Poing 'A' where initially employed for Phase IV training, is permitted to transfer to Point 'B'. The student mechanic completes the required 732 creditable days of training (300 days at Point 'A' and 432 days at Point 'B') on July 1, 1977. The employee may make one of the following elections with respect to establishment of seniority as journeyman mechanic in his craft:

(1) He may elect to take the retroactive seniority date as journeyman mechanic at Point 'A', his home point. In this event, he will establish a retroactive seniority date as journeyman mechanic at Point 'A' of February 5, 1976 (computed in accordance with Section 5 - Seniority - as amended by Section (1) of this Agreement) and will thereby forfeit any rights he may otherwise have had at Point 'B'.

(2) He may elect to establish seniority as journeyman mechanic at Point 'B', the point to which transferred. In this event, he will establish a seniority date as journeyman mechanic at Point 'B' of July 1, 1977, the date of completion of total days of training, and will thereby forfeit any right to seniority at Point 'A', initially his home point.

This agreement shall be effective July 1, 1977."

Under the express provision of that Agreement, the Carrier argues that Mr. Monroe has been treated properly. It is asserted that the Agreement gives an employee in Mr. Monroe's situation a choice upon completion of training. The choice is to remain at the transfer point with a mechanic's date as of the day of completion or return to the original point of hire and receive the benefit of 366 days retroactive seniority. This choice was offered to Mr. Monroe and as such no agreement has been violated, they argue. When examined in more detail, the Carrier's position develops additional argument.

Further, the Carrier argues that the July 15, 1977, Agreement should apply to the Claimant because the Carrier and the Organization signed an Agreement December 26, 1978, stating that the July Agreement was applicable and would govern the seniority date to be established by Mr. Monroe and another individual whose seniority date was disputed at the time. The Agreement states in pertinent part:

"Notwithstanding the above, Messrs. Monroe and Savage completed their total days of training as student mechanics subsequent to the effective date of the July 15, 1977, Agreement and Section 2 thereof was clearly applicable and governed with respect to establishment of their seniority dates as journeymen mechanics. We were in agreement that Messrs. Monroe and Savage had the option of establishing seniority as journeyman mechanic at the point to which they transferred effective with the completion of their total days of training and establish a retroactive seniority date at such location as provided in Section 2 of the July 15, 1977, Agreement."

The Carrier argues further that the claim before the Board in its most fundamental sense challenges the validity of the December 26, 1978 Agreement and they direct the Board's attention to some of its awards and others which hold that tribunals under the Railway Labor Act cannot entertain questions regarding the validity of Agreements, that the Board cannot change Agreements and that the Board has no equitable powers.

The Carrier also argues that the July 15, 1977, Agreement is a product of the Carrier's and the Organization's interpretation of the March 28, 1974, Agreement as amended July 10, 1974. The argument implies further that the March 28, 1974 Agreement, even in the absence of July 1977 Agreement, when read in conjunction with other rules, particularly Rules 17 Section 1 (b), 14 (d) (e), 16 and 38 would have the same effect as the July Agreement. The July 1977 Agreement did nothing to change the earlier Agreement. The only purpose was clarification. The interpretation suggested by the Petitioner of the March 28, 1974 Agreement as amended, the Carrier contends, is incorrect and cannot be supported.

When the Petitioner's position is examined in detail, the Board observed that he makes several arguments. The Claimant argues the issue of his seniority is not settled by the December 26, 1978, letter of understanding. The Claimant cannot be bound, it is asserted, by an agreement between the Carrier and the Union, because he had no knowledge of the settlement and it was made without his consent. Further the Petitioner argues:

"... it was settled prior to the time the petitioner made any written grievance of claims to the respondent. Nor at any time has the Union proceeded with a claim on behalf of petitioner. In fact the Union has expressly refused to process a grievance on behalf of petitioner.

It is clear that the Railway Labor Act does not confer upon the Union the statutory right to settle individual grievances without the knowledge and consent of the individual grievant. Elgin, Joliet B. Eastern Ry Co. v. Burley, 325 U. S. 711, 89 Led 1886, reaffirmed 327 U. S. 661, 90 Led 928 (1944). That case holds that Section 2 First, Second, Sixty and 3 First (i) and the proviso of Section 2 Fourth of the Railway Labor Act indicate that the right of the individual employee to confer

> "with management with respect to his own grievance is preserved. Specifically, the Supreme Court held that although the Union has exclusive authority to enter into bargaining contracts with the carriers, such exclusive power does not extend to the settlement of grievances arising under the contract. This was reinforced by the Attorney General's Opinion, 40 OAG 494 (1946) which provides that settlement of grievances, to be binding on an employee, must be authorized by him."

Secondly, the Claimant argues the Agreement in effect at the time of his transfer should apply, specifically the March 28, 1974, Agreement as amended July 10, 1974. The July 15, 1977 Agreement cannot possibly apply to the Claimant because it hadn't been made as of the date of his transfer in April of 1976.

The Claimant asserts next that when the proper agreement is read, it supports the petitioner's claim that his seniority should be a date at Knoxville 366 days retroactive to his completion date. Their assertion is based on Section 5 of the March 28, 1974, Agreement amended July 10, 1974. It reads:

> "Student Mechanics entering the Carrier's service on and after July 1, 1974 shall establish seniority as mechanic in their respective crafts at the location to which assigned during Phase IV of the training program as herein provided upon successful completion of a period of 3 years of training (a total of 732 work days) including time spent in an upgraded capacity (4 years of training, i.e., a total of 976 work days, in case of electricians) and shall be paid not less than the minimum rate established for journeymen mechanics of their respective crafts. The seniority date thus established shall be retroactive for a period of 366 work days, computed from the date such student mechanic successfully completed the required total number of days of training in his craft; provided however, a student mechanic shall not, by reason of this retroactive feature, establish a seniority date ahead of any journeyman mechanic in Carrier's service on the effective date of this Agreement who may transfer to or otherwise be employed at the location involved." (Emphasis added by Petitioner.)

The petitioner contends that the "location to which assigned during Phase IV training" in Mr. Monroe's case should be considered Knoxville. That under the clear language of the Agreement, that is where his seniority should be established. This contention is true for several reasons it is argued: First, that is where he spent the vast majority of his training time. Secondly, that he had been told by the Company and the Union upon his transfer to Knoxville that that was where his seniority would date. Third, that he had been treated by the Carrier at Knoxville in respect to force reductions and bidding as if he would receive 366 days retroactive seniority at Knoxville. Fourth, that Section 4(c)(3) of the March 28, 1974 Agreement suggests that the "location to which assigned during Phase IV training" will be the one where seniority accrues. Section 4(c)(3) states in part:

> "Insofar as feasible, student mechanics shall be assigned during Phase IV - On-the-Job training at the point at which they are to be employed as mechanics in the respective classes or crafts upon satisfactory completion of the training program."

Fifth, that contrary to Carrier's suggestion, Rule 17 Section 1 (b) does not do damage to their interpretation of Section 5 because it is ambiguous.

The petitioner's last major argument is that the Carrier and the Union misled the Claimant when he transferred by indicating he would have retroactive seniority at Knoxville. Had he not been misled, the Claimant, it is contended, would have simply quit at Chattanooga and rehired out at Knoxville thereby guaranteeing he would have retroactive seniority at Knoxville. The petitioner states further,

> "The petitioner contends that it is grossly inequitable to allow the respondent to mislead him into losing seniority over student mechanics hired after he transferred to the Coster Shop. The petitioner respectfully submits that should the Board rule against him on the contract questions previously raised, then it should at a minimum find that the respondent and the Union misled the petitioner and the Board should consider the petitioner has having rehired in Knoxville as of April 20, 1976, and set his seniority accordingly."

As the Board sees their task, we must as a threshold matter consider the petitioner's argument on one hand that the Carrier's argument that it is not controlling or valid and on the other hand the Carrier's argument that it is not effectively within the Board's jurisdiction to pass on the issue of an Agreement's validity and therefore that the December 26, 1978 Agreement is controlling and as a result the claim must be denied. The Carrier's argument in this regard is most compelling. It is the Board's opinion that the Petitioner is before the wrong forum if he wishes to challenge the validity of an Agreement between the Union and the Carrier. The Board operates under the authority of Section 3 First (i) of the Railway Labor Act. It states:

> "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes." (Emphasis added.)

It is clear that the Board's jurisdiction extends only to grievances and disputes arising out of the interpretation and application of contracts not to question or pass on the validity of contracts between the Union and Carrier. The petitioner's case fundamentally rests on the argument that the December 26, 1978 Agreement is invalid as a result of "the lack of due process" and therefore not controlling. It is not our function to consider the petitioner's challenge to the validity of the December 26 Agreement. We are instead limited to the question of whether that Agreement was applied properly to the Claimant. Our opinion has solid foundation in the case law of the Board and other tribunals under the Railway Labor Act. The following statement made in Second Division Award 6948 is typical of the Board's past and present thinking on its authority to consider the validity of Agreements:

> "This Board cannot deal in equity. The validity of Agreements cannot be challenged in this forum. Our function is to make sure that the Agreements are applied as written and in this instance it appears that the Agreements were meticulously adhered to by Carrier. There is no contract violation established by Petitioner. As Carrier points out, the Board's function is limited, under the Railway Labor Act, to adjudicating disputes growing out of the interpretation or application of agreements. We cannot change or amend agreements, which is the thrust of the remedy sought in this dispute." (Emphasis added.)

Also see Second Division Award 186 wherein it was stated:

> "The only question to be here decided is whether or not the then represtative had the authority to act in such a manner at that time. Obviously, he did have that right and we can find no basis for upsetting or overruling an agreement made between a duly authorized representative of the employes and the carrier.
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> The security of labor organizations rests on the principle of sustaining the decisions and actions of the duly authorized representatives of labor groups. Were we to begin reversing such decisions and making exceptions to this principle, we would be establishing precedents that would be detrimental to and that would eventually destroy the very structure of collective bargaining." (Emphasis added.)

Also see Award 302 of Special Board of Adjustment No. 570, Third Division Award 13830.

When the Board does consider the question whether the December 26, 1978 Agreement was applied properly we must answer in the affirmative. The Agreement clearly spells out that Mr. Monroe's seniority question was to be governed by the July 1977 Agreement inasmuch as he completed his training after the effective date of the Agreement. It further made clear that the Union and the Carrier were in agreement that because the July 11, 1977 Agreement applied to Mr. Monroe he was to be given an option of retroactive seniority at Chattanooga or a seniority date at Knoxville as of the date of his completion. In view that the Union, as

exclusive bargaining agent, and the Carrier specifically agreed that the July 15, 1977, Agreement applied to the Claimant and that the question of his seniority would be handled by giving the above explained option, we must deny the petitioner's claim.

Although other issues raised by petitioner are not "alive" in light of our finding above, the Board would find it beneficial to consider them.

First, the parties should be informed that even absent the December 26, 1978 Agreement or assuming it was invalid, the Board would have found the July 11, 1977 Agreement to have applied to the Claimant even though it was made after his transfer. The condition or action that activates or executes the applicability of the July 15, 1977 Agreement is not the act of transfer but the date of completion of the training and in the Claimant's case this was after the Agreement was signed. The date of transfer or the act of transfer is irrelevant under the July 15, 1977 Agreement. What is relevant is where the student mechanic is at the time of completion. The Agreement clearly points out that a transferred student mechanic "shall be treated with respect to establishment of seniority as a journeyman in his craft upon successful completion of the total days of training in the following manner: ..." (Emphasis added by the Board). The manner in which the student mechanic will be treated is further explained in the Agreement and the question of Mr. Monroe's seniority was handled in strict compliance with those provisions.

Secondly, in respect to other issues raised by the petitioner it must be stated that in our opinion the July 15, 1977 Agreement took nothing away from the Claimant. It represented no change in the March 28, 1974 Agreement as amended July 10, 1974. Even if the 1974 Agreement stood alone our interpretation of it would not have resulted in the Claimant receiving retroactive seniority at Knoxville. We recognized and understand the argument of the petitioner in respect to Section 5 of the March 28, 1974, as amended, Agreement but the general language of the Agreement cannot be given as much weight as the specific language of Rule 17 Section 1 (b) and Rule 14(e) which read as follows:

> "(b) In the event a student mechanic employed pursuant to the provisions of Rule 38 is permitted to transfer under this rule, he will not, of course, establish seniority at the point to which transferred, but his days of training at the point from which transferred shall be credited toward the completion of the total period of training provided for in the agreement dated March 28, 1974, as amended." (Emphasis added)

Rule 14(e):

> "(e) Except as otherwise specifically provided, an employee establishes seniority under this Rule 14 only at the point employed within the territory under jurisdiction of a Shop Manager, Shop Superintendent or Master Mechanic. The point at which an employee first enters the service and establishes seniority shall be the employee's home point and, except as otherwise specifically provided in this agreement shall remain the employee's home point."

Lastly, the Board sees it necessary to consider the petitioner's argument that if the Board rules against him on the contract questions they should, in light of the misinformation given to the Claimant by the local Carrier and Union officials, consider the petitioner as having been re-hired in Knoxville as of April 20, 1976, and give him a retroactive date at Knoxville accordingly. First of all, the evidence is not undisputed that he was misinformed. Secondly, the petitioner's request is a plea for equity, which as previously mentioned is beyond the authority and function of this Board. The degree and extent to which the Claimant had the right to rely on the alleged misinformation by the Carrier and the Union is not a question for this forum.

In conclusion, the Board finds that the Carrier has properly applied the pertinent Agreement (December 26, 1978) and therefore the claim is denied.

A W A R D

Claim denied.

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 3rd day of June, 1981.