

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 10238
Docket No. 9036-T
2-L&N-MA-'85

The Second Division consisted of the regular members and in addition Referee Rodney E. Dennis when award was rendered.

Parties to Dispute: (International Association of Machinists and Aerospace Workers
(
(Louisville and Nashville Railroad Company

Dispute: Claim of Employees:

That the Louisville and Nashville Railroad Company is in violation of the existing controlling agreement effective September 1, 1943, as subsequently amended, Rule 21(c), but not limited thereto, as a result of carrying J. H. Robinson's (I.D. 261402) name on the South Louisville Mechanical Facilities Machinists Seniority Roster because on or about August 1, 1977, J. H. Robinson severed his employment relationship with the L&N Railroad Company by accepting employment with the Seaboard Coastline (sic) Railroad Company.

That accordingly J. H. Robinson's name be removed from the South Louisville Mechanical Facilities Machinists Seniority Roster.

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 employes 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 were given due notice of hearing thereon.

Petitioner in this instance is the Local Chairman at the South Louisville Mechanics Facility. He protested Carrier's maintaining the name of J. H. Robinson on the Machinist Seniority Roster at the L&N South Louisville Shops when Robinson had been hired as a Supervisor on the Seaboard Coast Line.

Petitioner cites Rule 21 (c) of the Controlling Agreement as its authority for its position. Rule 21 (c) reads as follows:

"Rule 21(c) Employes elected as officers of their organizations or promoted to official positions with the L&N Railroad, or securing positions with any agency, board, or commission established pursuant to Federal or State Statutes, dealing with railroads, or with agencies established by railroads on regional or national basis shall be considered on leave of absence while so engaged with the right to assert their seniority within 30 days after release from such employment."

At the outset, Carrier takes the position that the office responsible for receiving claims never received the initial claim in this instance. It presented a statement signed by Mr. Roy and Mr. Parrish, two Carrier representatives concerned with Craft claims, stating that they never saw the initial claim. In that same letter, however, it is stated that the Secretary in the office remembers the claim and that she did give it to the proper person. Statements to this effect are also part of the record of this case. It is this Division's finding that a claim was properly filed and that it should be decided on the merits.

Petitioner's position in the case is the more persuasive and has Agreement support. Carrier alludes to past instances in which Supervisors in the SCL have maintained Craft seniority on the L&N. It does not, however, name them. It talks of a merger between the L&N and SCL. It does not, however, present evidence that such a merger has taken place or prove that Rule 21(c) would apply if a merger had taken place.

The fact is that no Rule was cited by Carrier to support its position and Rule 21(c) does support the Petitioner's position. It states that employees promoted to official positions with the L&N Railroad shall have the right to assert their seniority within 30 days after they leave a Supervisory position. It does not mention any other Railroad or imply a wider application than the L&N.


Based on the record before it, this Division is compelled to sustain Petitioner claim.

A W A R D

Claim sustained per the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 31st day of January 1985.