

The Second Division consisted of the regular members and in addition Referee John J. Mikrut, Jr. when award was rendered.

(Brotherhood Railway Carmen of the United States
(and Canada
Parties to Dispute: (
(Patapsco and Back Rivers Railroad Company

Dispute: Claim of Employes:

1. That the Patapsco and Back Rivers Railroad Company violated the controlling Agreement, specifically Rules 14 and 19, commencing with the date of August 30, 1982 and continuing when they allowed Mr. Charles R. Hewitt to return to the Carman's Craft, arbitrarily allowing him to retain his seniority, and in so doing allowed him to exercise his seniority rights, at Sparrows Point, Maryland, after working in the capacity of Yardmaster, regularly assigned as such, dating back to July 6, 1981.

2. That accordingly, the name of Charles R. Hewitt be removed from the Carmen's Seniority Roster at Sparrows Point, Md. PBR RR., and that Carmen, Claimants, John G. Robertson, Harold Coleman be compensated in full for all losses encountered account this arbitrary maneuver on the part of Carrier, as follows: Carman Coleman, four (4) hours pay at the straight time rate (Sunday Premium) for each and every Sunday Charles R. Hewitt is permitted to work in his stead, and continuing until resolved; Carman John G. Robertson, eight (8) hours per day at the straight time rate for A-Carmen, for each and every day Charles R. Hewitt is allowed to work as a Carman, and continuing, until resolved.

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 waived right of appearance at hearing thereon.

The genesis of this Claim surrounds the promotion of Carman Charles Hewitt to Yardmaster Trainee and subsequently to Yardmaster on July 6, 1981.

Hewitt continued as Yardmaster at Sparrows Point, Maryland, for almost a year until, due to a decline in business, he was furloughed effective August 23, 1982. One week later, on August 30, Hewitt exercised his Carman seniority and bumped back into the Carman's ranks, displacing Claimant Harold Coleman, leaving Claimant John G. Robertson the senior furloughed Carman at Sparrows Point on this date.

Organization alleges the circumstances involved in the instant dispute dictate a violation of Rules 14 and 19 of the Controlling Agreement.

Rule 14 states:

- "(a) Mechanics in service shall be considered for promotions of foremen in their respective craft.
- (b) Employees promoted to foremen or higher supervisory positions shall retain and accumulate their seniority in the craft from which promoted".

Rule 19 states:

"An employee absent on leave who engages in other employment, shall lose his seniority, unless special provisions have been made therefore by the proper official of the company and the committee representing the craft".

Organization's position herein is based on a narrow reading of Rule 14. According to this view, Rule 14 only protects the seniority of those promoted to positions supervising the work of the Carman's craft. Therefore, according to Organization, when Hewitt left the craft to work as a Yardmaster without obtaining a Rule 19 leave of absence, he forfeited his Carman seniority, making him ineligible to return to the craft with his accumulated seniority on August 30, 1982.

Organization attempts to bolster its case by pointing to the fact that the Carrier removed Hewitt from the Carman's 1982 Promotion list.

Carrier contends that it acted properly. Accordingly, Carrier reads Rule 14 broadly, in particular the portion in Section (b) referring to employees promoted to Foremen or higher supervisory positions retaining seniority. Carrier is of the opinion that this clause protected the seniority of Carman Hewitt during his tenure in the higher supervisory position of Yardmaster.

Carrier also contends that Organization is procedurally estopped from protesting Hewitt's Carman seniority. In this regard, Carrier, relying on Rule 12's sixty-day protest period, notes that Organization first objected to the contents of the Carman's roster many months after the seniority list became contractually final.

Simply put, the Board agrees with Carrier's procedural objection in this matter. Employees' Exhibit D. shows Charles Hewitt to be Number 24 on the Carmen's January 1, 1982 Seniority List. The Board finds the Claim giving rise to this dispute was filed six months after Rule 12's limitation.

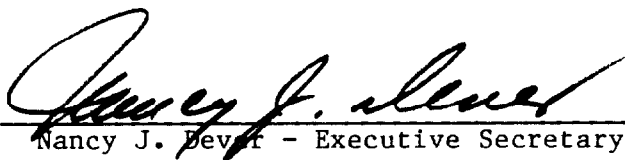
Protesting a promotion list was not enough to preserve Organization's seniority roster objection. Organization is contractually estopped from protesting the makeup of the 1982 Sparrows Point Carmen's seniority roster. Therefore, the Board must deny this Claim.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Bever - Executive Secretary

Dated at Chicago, Illinois, this 4th day of June 1986.