

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

(Melvin J. Forcier

Parties to Dispute: (

(Burlington Northern Railroad Company

Dispute: Claim of Employees:

1. That, in violation of the current agreements, Burlington Northern Railroad improperly changed the seniority date of Machinist Melvin J. Forcier.

2. That accordingly, the Carrier be ordered to readjust Mr. Forcier's seniority back to the previous date of May 18, 1972, as it had existed for some ten years.

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 Claimant began his Machinist apprenticeship with the Carrier on July 2, 1970. At that time, until an Agreement was reached on May 17, 1972, the standard period of apprenticeship ran approximately four (4) years. The Agreement in effect when Claimant began his apprenticeship contained Rule 38 dealing with apprentices, of which subparagraph (i) stated:

"An apprentice as of the date of completion of his apprenticeship shall have his name placed on the mechanic's seniority roster at his home point."

On May 17, 1972, Carrier and a number of shop crafts, including the Machinists, entered into an Agreement modifying Rule 38, which Agreement expressly superceded any interpretation, understanding or practice under previous training Rules that conflicted with the new provisions of the Rule. The stated purpose of the May 17, 1972, Agreement was to establish a modern training program to insure an adequate supply of qualified journeymen Mechanics for the Carrier's future labor requirements. In an important provision of that Agreement, the training period for regular apprentices was reduced from four to three years based upon a designated number of days of actual work on regular working days.

The May 17, 1972, Agreement also "grandfathered-in" those apprentices who, like the Claimant, were already in service. In Rule 38(k), the new Agreement provided in pertinent part:

"Apprentices in Service - Any apprentice who has started his apprenticeship training before the date of this agreement shall have the remainder of his training changed to conform as nearly as practicable to this agreement, and the over-all length of his training shall not exceed the time specified in paragraph (b) if it has not already done so."

The evidence of record contains a document entitled "Apprentice Status Change" from Claimant's personnel file. This document established the fact that Claimant last worked as an apprentice on April 29, 1973, approximately three years after he began his apprenticeship with the Carrier. This document reflects the fact that the remainder of Claimant's training was changed to conform to the new three year apprenticeship period established under the May 17, 1972, Agreement. This document states in pertinent part:

"STATUS CHANGE

DATE CHANGE EFFECTIVE

April 30, 1973 (Seniority Date as Machinist retro-active to May 18, 1972 acct. agreement)

<input type="checkbox"/> Started Apprenticeship	<input type="checkbox"/> Returned to Service
<input type="checkbox"/> Leave of Absence	<input type="checkbox"/> Reinstated
<input type="checkbox"/> Laid Off	<input type="checkbox"/> Re-Employed
<input type="checkbox"/> Resigned	<input type="checkbox"/> Transferred
<input type="checkbox"/> Dropped	<input checked="" type="checkbox"/> Completed Apprenticeship
<input type="checkbox"/> Dismissed	<input type="checkbox"/> Other

EXPLANATION

Last Day worked as apprentice April 29, 1973 - - had been working in advanced capacity as Machinist since November 26, 1972. Seniority date retro-active to May 18, 1972 account agreement."

Claimant retained this seniority date of May 18, 1972, for approximately ten (10) years. On December 2, 1981, the Claimant was transferred from the Carrier's round house facility in Grand Forks, North Dakota to its Northtown Diesel Shop at Minneapolis, Minnesota. In so doing, Claimant also transferred into a new seniority district and his seniority date was dove-tailed with the other Machinists on what is commonly referred to as the Twin Cities Seniority District.

It remains unclear from the record as to the precise date in 1982 when employees within the Twin Cities Seniority District became aware of Claimant's seniority date. Claimant's May 18, 1972, seniority date was not included on the January 1, 1982, Seniority Roster for the Twin Cities District. In any event, a protest was made by another Machinist on the roster as to Claimant's seniority date. Both the Carrier and Organization agreed on the property that Claimant's seniority date should have been April 30, 1973, rather than May 18, 1972. This change in Claimant's seniority date would have lowered his ranking a minimum of four positions on the January 1, 1982, Twin Cities Seniority District Roster. Claimant has appealed to this Board the joint decision of the Carrier and Organization to change his seniority date.

The Claimant's correct seniority date hinges on a specific provision of the May 17, 1972 Agreement, and the interpretation given that provision by the conduct of the parties.

The parties negotiated an Agreement containing Rule 38, subparagraph (1). That provision, on its face, was designed to protect any apprentice who started his training before May 17, 1982, from receiving a lower position on the applicable seniority roster than apprentices who started training after that date. In assigning Claimant a seniority date immediately after the effective date of the May 17, 1972 Agreement, the parties acted in accordance with the terms of their own Agreement to insure that an apprentice who began his training on May 18, 1972, almost two full years after Claimant, would not ". . . result in any such apprentice [Claimant] starting lower on the mechanics' seniority roster than apprentices who started training after the date of this agreement. . . ." This Board is not empowered to alter the agreement reached by the parties on May 17, 1972, or the mutual, interpretation given the Agreement's provisions by both the Carrier and Organization.

It should be noted that Claimant's seniority date of May 18, 1972, was in effect each year for almost a ten (10) year period. Even assuming, arguendo, that the correct seniority date was April 30, 1973, Claimant, the Carrier and the entire Machinists craft in the Dakota-Fargo Seniority District relied upon the agreed date of May 18, 1972, during the ensuing ten years for purposes of layoff, recall, bidding, etc. The Board finds that both the Carrier and Organization are estopped from changing this date, where their present interpretation of their own Agreement differs from their earlier interpretation given within one (1) year of the Agreement's effective date, and upon which the Claimant, Carrier and other Machinists relied for a period of approximately ten years. Third Division Award No. 21703 cited by the Carrier

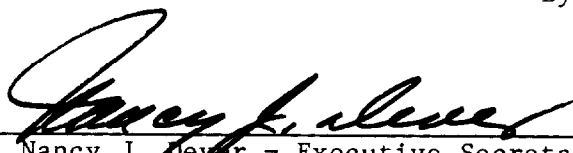
is inapposite to the facts of this Claim. Award No. 21703 represents a decision by the Third Division to reject interpretation of a Claim under the terms of a non-existent rule merely because the parties mutually misunderstood that Rule to have application to the facts of that case. Indeed, this Board itself would have to apply a non-existent Rule to confirm April 30, 1973, as Claimant's seniority date, and commit the very act condemned in Award No. 21703. This Board must respectfully decline to take such action. The Carrier and Organization are ordered to correct their records to reflect May 18, 1972, as Claimant's correct seniority date.

A W A R D

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Second Division

Attest:

  
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Nancy J. Deyer - Executive Secretary

Dated at Chicago, Illinois, this 29th day of October 1986.