

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

Parties to Dispute: (Frank Derrick
(Seaboard System Railroad

Dispute: Claim of Employees:

I hereby relinquish my seniority as a MACHINIST HELPER to accept a position as MACHINIST HELPER APPR. effective on 11-17-80.

The carrier violated the agreement set forth by the (L&N) Railroad), which the carrier denied the position in the date agreed upon.

That the carrier is in violation of the Controlling Agreement, especially Article V(a) of the Collective Bargaining Agreement between Seaboard predecessor, the Louisville and Nashville Railroad Company, and Machinist Union Local 205.

Article V(a) States that if the grievance is not disallowed within 60 days after it is filed, the claim or grievance shall be allowed as presented.

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.

In early October, 1980, the Carrier advised the Organization and all employees affected, that Machinist Helper positions at Louisville, Kentucky would be abolished, effective November 17, 1980, because of a decrease in the need for employees in that classification. The employees in question were further advised that Apprentice positions were available, and that Machinist Helpers who did not wish to become Apprentices would be furloughed.

As a threshold issue the Claimant asserts that as of June 9, 1983, he did not receive a formal response from the Carrier as required under Article V(a). Under Article V(a) a grievance is allowed as presented if the Carrier fails to notify the Claimant of the reasons for disallowance of the Claim within sixty (60) days after the Claim is filed. The record discloses that the Claimant's March 23, 1983, grievance was delivered by Local Chairman Knoop to Foreman McKeehan on March 24, 1983. Shop Superintendent Winstead responded to the Claimant at his residence on March 30, 1983, in which he declined the grievance. Accordingly, the Carrier complied with the time limits contained in Article V(a) in responding to the grievance dated March 23, 1983. It should be noted that the resolution of this threshold issue is based on the assumption that the Claim was presented within sixty (60) days from the date of the occurrence on which the Claim is based. However, as indicated in the discussion of the merits, the Claim was not timely filed.

Turning to the merits, on October 22, 1980, the Carrier posted a Notice at the South Louisville Shops stating, among other things, that the cut off date for signing the Form, indicating a desire to accept an Apprenticeship was November 3, 1980. The Claimant, a Machinist Helper, signed the Form on October 31, 1980, for an Apprenticeship to begin on November 17, 1980. He then requested and was granted a sixty (60) day medical leave of absence due to an off duty injury sustained on November 10, 1980. He commenced his Apprenticeship when he reported for work on January 16, 1981. The Claimant contends that the Form he signed on October 31, indicating his desire to become an Apprentice constituted an Agreement by the Carrier to give him a November 17, 1980, seniority date as an Apprentice, as opposed to the January 16, 1981, date when he began work as an Apprentice.

The Form that the Claimant signed on October 31, 1980, constituted an acknowledgement by him that he had been offered an Apprenticeship commencing November 17, 1980, and by signing his name at the appropriate place on the Form he chose to accept the Apprenticeship. Rule 29(a) of the Agreement provides that seniority of employees "begins from the date and time the employee starts to work." The historical application of Rule 29(a) between the parties has been for an employee to establish seniority in a classification at the time he commences working in the classification. Furthermore, under the Agreement with the Organization, an employee may hold seniority and work in only one classification.

The Claimant did not relinquish his seniority as a Machinist Helper on October 31, 1980; nor did he relinquish his seniority as a Machinist Helper on November 17, 1980. On the January 1, 1981, seniority roster he was properly carried as a Machinist Helper in a leave of absence/furlough status. His Machinist Helper seniority was properly terminated on January 16, 1981 when he established seniority in his Apprentice classification.

Based on the seniority date of January 16, 1981, the Claimant was furloughed on May 13, 1981; he was recalled on June 22, 1981, and furloughed again on January 3, 1982. The Claimant was carried on the January 1, 1982,

roster with the Apprentice seniority date of January 16, 1981, and he alleged on October 13, 1982, that his Apprentice seniority date should be November 17, 1980, rather than January 16, 1981. He was again carried on the January 1, 1983, roster with his January 16, 1981, seniority date and on March 23, 1983, he claimed that the January 16, 1981, date was incorrect.

As the Board has already established, under Rule 29(a) the Claimant's seniority date of January 16, 1981, was proper under the Agreement. Moreover, his protests on October 13 1982, and March 23, were untimely under Rule 29(c) of the Agreement. Under Rule 29(c) seniority rosters are revised in January of each year. They are posted and "open to protest and proper corrections for a period of 60 days from date of posting*." In Second Division Award No. 7414, the following was stated:

"Sixty days after it has been established lacking a protest, the seniority roster becomes permanent and unchallengeable in the future, except that Management may revise it in January of each year. Thereafter, employees may challenge the list only insofar as the revision constitutes a change from the year before and this challenge must be made within the allotted 60 days by the employees aggrieved or the right to do so is forever lost. (See Third Division Award No. 12297; Second Division Award No. 1958; and First Division Award No. 12782)." (Emphasis added).

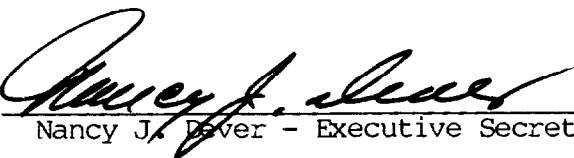
And finally, it should be noted that the Claimant is without contractual authority to represent and pursue the Claims of other employees.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois this 7th day of January 1987.