

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: (
(Missouri Pacific Railroad Company

Dispute: Claim of Employees:

1. That the Missouri Pacific Railroad Company violated Rules 16 (a) and (b) and Rule 25(a) of the controlling agreement by maintaining Mr. W. K. James' name on the Carmen's seniority list after he transferred to a yardmaster.

2. That the Missouri Pacific Railroad Company be ordered to remove Mr. W. K. James' name from the Carmen's seniority list at San Antonio, Texas.

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.

W. K. James was employed by Carrier on May 13, 1974, in the Car Department at its San Antonio, Texas facility, and he established seniority as a Carman on the Carmen's seniority list as of that date.

According to the record, Mr. James worked in the Carmen's craft at the San Antonio facility until October 15, 1979, when he was promoted to Yardmaster. As indicated, however, his name was included on the San Antonio Carmen's Seniority Roster in January, 1980 and 1981. Said inclusions were without Organization protest.

Mr. James' seniority was finally challenged by Organization in a letter dated July 10, 1981, wherein the Local Chairman requested Carrier to notify Yardmaster James that he would lose his Carman's seniority unless he protected it by working in the craft as per Rules 16 and 25 of the Controlling Agreement.

be furnished with a copy of such notice and protest list and, upon presentation of proof of error during the period of posting, such error will be corrected before the revised roster for the calendar year is compiled and the additions or elimination shown on the corrected notice and protest list shall be considered permanent...

* * *

(d) Men transferred or promoted by the company to positions as supervisors or other official capacity will retain their home point seniority unimpaired so long as continuity of service is unbroken.

* * *

Rule 31

(a) All claims or grievances must be presented in writing by or on behalf of the employe involved, to the officer of the Carrier authorized to receive same, within 60 days from the date of the occurrence on which the claim or grievance is based.

* * *

In further support of its position, Carrier also argues that:

(1) Organization is estopped from challenging Mr. James' Carman seniority, since Organization failed to make a timely objection thereof for almost two (2) years as is required by Rule 25(c); and (2) the clear language of Rule 25(d) protects Mr. James' seniority since he was promoted to "other official capacity" as an Operating Department Supervisor rather than a Mechanical Department Supervisor, and he has maintained his continuity of service in that position.

The Board has carefully read, studied, and considered the complete record in this dispute, and is persuaded that Carrier's position, as presented, is correct and, therefore, must prevail. Stated simply, Organization has failed to prove a specific contractual violation in this case. Moreover, even if Organization had been successful in arguing the merits portion of this Claim, Organization still could not have overcome Carrier's procedural objection that the protest itself was not filed in a timely fashion as is required.