

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13210

Docket No. 13223

98-2-96-2-135

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

(Brotherhood Railway Carmen, Division of
(Transportation Communications International Union
PARTIES TO DISPUTE: (
(Delaware and Hudson Railway Company, Inc.

STATEMENT OF CLAIM:

"Claim of the Committee of the Union that:

1. That the Delaware and Hudson Railway Company, (Division of CP Rail) hereinafter 'Carrier' violated the provisions of our agreement, in particular Rule 22, when the Carrier allowed four (4) employees to accrue seniority that they are not entitled. Thus, denying senior employees their service rights.
2. That, accordingly, the Delaware and Hudson Railway Company be ordered to adjust and otherwise allow the Capital District prior rights employees J. E. Kinsey, R. J. Beauregard, D. A. MacMillan, D. Robinson, L. St. Gelais and R. Frazier, hereinafter 'Claimants' to utilize their seniority rights to bid positions, displacement rights and vacations, as provided for in our collective agreement and substantiated in the agreed upon implementing agreement."

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

Simply stated, the Claimants here followed their work from Rouses Point and Fort Edward, New York, to Saratoga Springs, New York. The Carmen who were transferred had their seniority rights dovetailed into the Saratoga Carmen's seniority roster. The basic concern of the Claimants is that dovetailing the seniority roster affected the rights of employees at Saratoga, New York.

Arguments have been made that this claim should be denied because it was not filed in a timely manner. The Board finds, without addressing the procedural arguments, that this claim should be settled on its merits.

Prior to the transfers at issue here, the parties executed Implementing Agreements to facilitate the orderly transfer of employees. The pertinent part of Section 4 of these Agreements reads as follows:

"Employees transferring to Saratoga Springs have their Carman seniority date dovetailed into the D&H system seniority roster, retaining prior rights at the points from which transferred."

We find, as did the former General President of the Organization, Mr. Robert P. Wojtowicz, when he stated in his letter of October 13, 1995 to the General Chairman of the New England JP13 No. 40 that "I don't know how you can be confused by this language, it is clear and unambiguous and so states in the aforementioned Section 4."

The Board also notes that the referred to Section 4 language and the notion of dovetailing is commonly used in matters such as these.

AWARD

Claim denied.

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ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) not be made.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 11th day of February 1998.