

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

Award No. 13320

Docket No. 13046

98-2-95-2-69

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

(International Brotherhood of Electrical Workers
(System Council No. 16

PARTIES TO DISPUTE: (

(Burlington Northern Railroad

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 25, Paragraph F in particular, the Burlington Northern Railroad Company improperly assigned a wrong seniority date to Electronic Technician James Kovach of Memphis, Tennessee on the January, 1994 Telecommunications Department Seniority Roster, and;
2. Accordingly, the Burlington Northern Railroad Company should correct Electronic Technician James Kovach's seniority date to August 24, 1992, rather than the improper date on the January, 1994 Telecommunications Seniority Roster.”

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.

In this dispute, the Claimant contends that he was given an improper seniority date. To resolve this dispute, it is instructive to review certain portions of the Claimant's employment history, as shown by the on-the-property record:

February 1992: Claimant employed as a lineman, Tacoma, Washington

February 1992: On the same date when he began work (which is not shown), the Claimant was injured on the job. He was then off work for six (6) months.

April 1992: Claimant bid and was awarded an Electronic Technician Apprentice position in Ft. Worth, Texas. However, because of his on-the-job injury, he could not start his apprenticeship until August 1992.

September 29, 1992: Claimant injured on the job.

October 2, 1992: Claimant had surgery for hernia.

October 15, 1992: Claimant's apprentice position abolished.

February 22, 1993: Claimant was placed on an unbid vacant Electronic Technician position at Memphis, Tennessee.

Prior to February 22, while the Claimant was recovering, he received his FCC license and had passed the Electronic Technician's entrance examination.

The Claimant seeks to have a seniority date of August 24, 1992, rather than February 22, 1993.

The Organization argues that, had it not been for the on-the-job injury, the Claimant would have had a seniority date of August 24, 1992, as he claims. It submits that Rule 25 Seniority Paragraph (f) applies in this case. Paragraph (f) reads as follows:

“(f) If any trainee, regular apprentice, helper apprentice, or upgraded helper is injured while on duty and such injury causes this employee to lose time from his position as a trainee, apprentice (regular or helper) or an upgraded helper, which loss of time would delay the completion of his time relative to qualifying as a mechanic and establishing seniority as such, the so affected employee, upon his return to active service with Carrier and the completion of the necessary time to be granted a seniority date as a mechanic, shall be entitled to a retroactive seniority date as a mechanic, as of the date he would have acquired had he not lost time account of being injured while on duty. The same provision shall apply to trainees, apprentices (regular or helper) who lose time account active military service, National Guard service, or training or Reserve active duty training.”

The Carrier, on the other hand, argues that Rule 25(g) is governing in this matter. That paragraph reads as follows:

“(g) Present employees bidding or applying for a journeyman position in a class in which they do not hold seniority rights or have not satisfactorily completed an apprentice training program under prevailing agreements, must successfully pass an entrance examination mutually agreed to by the Carrier and the General Chairman before they are assigned the position. Such employees bidding or applying for a position which, by law requires a license, must possess the license before the examination may be taken. Prospective new employees must also have license required by law and successfully pass an entrance examination applicable to the position they are seeking.

The minimum passing grade of these entrance examinations shall be 70% and the applicants passing an examination and receiving an assignment will then be further required to participate in and successfully complete all portions of the applicable training program; however, those applicants who have received a grade of 87% or higher on the entrance

examination will not be required to participate in the correspondence portion of the training.

The employees subject herein shall establish seniority in accord with the provisions of Rule 27 (except upgraded apprentices electing option 2 of Rule 9), and will not be subject to entry rates.

It is understood that applicants for a journeyman's position who, within the probationary period of Rule 27, present documented evidence of having served a four-year apprenticeship in the class for which they are applying or who present valid IBEW journeyman's credentials for the class, will, at their option, be exempted from the classroom portion of the apprenticeship training."

Rule 27 Bulletining New Positions and Vacancies, referred to above:

"Rule 27. BULLETINING NEW POSITIONS AND VACANCIES

* * *

(b) Bulletins will be addressed to members of the class in which the vacancy exists, as well as to employees in all lower classes, and, in the event no bid is received from an employee in the class in which the vacancy occurs the senior qualified employee in the next lower class bidding for the same will be assigned and will establish a date in such higher class as of the date he first performs service therein provided he works on the position at least sixty (60) calendar days. The 60-day requirement may be waived by mutual agreement in case of individuals unusually qualified due to training and experience. If after a fair trial, an employee fails to qualify in a higher class, he may return to the lower class from which he came but may displace only the junior employee holding a regular assignment in such lower class, if his junior, and he will not establish seniority in the higher class.

* * * *"

The Claimant obtained his Electronic Position under the provisions of Rule 25(g). That Rule, in pertinent part, provides that employees will "establish seniority in accord with the provisions of Rule 27."

Rule 27(b) noted previously, in relevant part, states "in the event no bid is received from an employee in the class in which the vacancy occurs the senior qualified employee in the next lower class bidding for same will be assigned and will establish a date in such higher class as of the date he first performs service therein provided he works on the position at least sixty (60) calendar days."

Therefore, an employee obtaining a position in a higher class will establish seniority in that class on the date that he first performs service. This is the situation that applies to the Claimant. The Claimant first performed service as an Electronic Technician on February 22, 1993 and, thus, established seniority in that class on that date. Counting back to establish seniority as provided by Rule 25(f) is applicable only when the employee completes the apprenticeship training program. This did not happen in this case. The Claimant obtained his Electronic Technician position, not because he completed an apprenticeship, but because he passed an entrance examination and obtained an FCC license pursuant to Rule 25(g).

AWARD

Claim denied.

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 16th day of September 1998.