

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 13983
Docket No. 13866
08-2-NRAB-00002-080016**

The Second Division consisted of the regular members and in addition Referee James E. Conway when award was rendered.

**(International Brotherhood of Electrical Workers
PARTIES TO DISPUTE: (
(BNSF Railway Company**

STATEMENT OF CLAIM:

- “1. That in violation of the controlling Agreement, Rule 26 in particular, the BNSF Railway Company arbitrarily changed the seniority date of Mechanical Department Electrician John J. Clontz on the Lake District 370 Seniority Roster issued on January 1, 2007.**
- 2. That accordingly, the BNSF Railway Company be required to re-establish the seniority date of Mechanical Department Electrician John J. Clontz as it was posted on the January 1, 2007 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.

The essential facts underlying this Claim are undisputed. Claimant Clontz, a Journeyman Electrician at Carrier's facilities in Brainerd, MN, was assigned a seniority date of March 24, 1997 on the January 1, 2007 seniority roster, giving him a number 8 position on the list. On or about March 25, 2007, Carrier then issued a revised seniority roster reflecting Claimant's seniority as November 6, 2006, giving him a number 23 position.

The Organization immediately initiated a timely Claim on Clontz's behalf, handled it in the usual fashion on the property and following denial by Carrier's highest designated official and appropriate conference, appealed the matter to the Board for final and binding resolution.

In declining to reassign Claimant's seniority date back to March 24, 1997, Carrier takes the position that because he was granted a leave of absence and craft transfer to train service pursuant to Rule 16 of the Agreement, and then voluntarily returned to service as a Mechanical Department Electrician fifty-two days later on November 6, 2006 without completing his probationary period as a Conductor, his seniority was properly adjusted to the date of his return, November 6, 2006.

The Organization's protest is based principally upon the contention that in waiting 84 days after the posting of the January 1, 2007 roster to change Claimant's seniority date Carrier has arbitrarily adjusted his seniority in violation of Rule 26 of the Agreement whose terms call for such corrections to be made within 60 days from date of posting the list.

The dispute reflects the tension between two arguably applicable Rules. Rule 26 – SENIORITY provides as follows:

“(a) Seniority lists shall be posted in the month of January of each year and they will be open for correction for a period of sixty (60) days from the date of posting of the seniority roster on which an employee's name first appears following date of employment, and no change will be made thereafter unless attention of Foreman has been called in writing to any error within the limitations provided herein. Typographical errors may be corrected at any time.”

Rule 16 –LEAVE OF ABSENCE reads in pertinent part:

“(i) An employee who obtains permission to transfer to another craft or class, whether or not covered by this Agreement, which requires him to give up his seniority in this present craft, shall be considered on leave of absence for the time necessary to complete the probationary period or training program required to qualify for seniority in that craft or class, after which both the leave of absence and seniority in his former craft under this Agreement shall automatically terminate. The transferring employee may return to and exercise seniority in the craft from which he transferred only upon his involuntary failure to qualify for seniority status in the craft to which he transferred. This paragraph is not intended to apply to promotions under Rule 14.”

From the foregoing, it is apparent that under the usual circumstances the employee who involuntarily returns to an IBEW position resumes his former seniority date, while one who voluntarily reverts loses seniority for the time out of service while on leave. It is also clear that adjustments to seniority lists must be normally made timely, i.e., within 60 days from date of original posting. In cases such as the case under consideration, the terms of Rule 26 and Rule 16 obviously have the potential of colliding and throwing off sparks.

In this instance it seems clear that the Board need not attempt to wrestle with questions of how these provisions were intended to be harmonized as a matter of broad principle. According to Claimant’s undisputed representations, while still a Conductor Trainee but considering a return to his prior work he first reviewed the applicable rules and then spoke with both the supervisor in his shop and the appropriate supervisor in train service. Claimant states without equivocation that he was told he could return to his Journeyman Electrician position with no loss of seniority, and in reliance on those representations voluntarily dropped out of the Conductor Training. Thus, while the applicable rules may or may not normally provide for such an outcome, under the unique facts presented, and consistent with basic principles of both fairness and estoppel, the Claim must be honored.

AWARD

The Claim is sustained. Carrier is directed to re-establish the seniority date of John J. Clontz as it appeared on the January 1, 2007 roster.

Form 1
Page 4

Award No. 13983
Docket No. 13866
08-2-NRAB-00002-080016

ORDER

This Board, after consideration of the dispute identified above, hereby orders that an award favorable to the Claimant(s) be made. The Carrier is ordered to make the Award effective on or before 30 days following the postmark date the Award is transmitted to the parties.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 25th day of November 2008.