

Form 1

**NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION**

**Award No. 14028
Docket No. 13913
10-2-NRAB-00002-090021**

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

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

STATEMENT OF CLAIM:

- “(1) In accord with the provisions of Rule 32 of the controlling Agreement the employees at the Kansas City (Argentine and North Kansas City) BNSF Mechanical Department Facility initiated claims under the dates of April 15 and 29, 2008, relative to the establishment of seniority for Kansas City Mechanical Department Electricians J. I. Delong, J. D. Ragland, D. S. Keltner, Charles Haywood and Oscar Garza.**
- (2). As a result of the parties being unable to reach a mutually agreeable resolution in this dispute, the employees present to this Board the question of interpretation of the applicable rule of the controlling 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.

On July 6, 2004, the Carrier hired five employees. DeLong, Ragland and Keltner were hired as Journeyman Electricians. Haywood and Garza were hired as Laborers, but eventually entered the Electrical Apprentice Program and became Electricians. They were then assigned seniority dates of July 6, 2004, the same dates listed for the three employees hired as Journeyman Electricians. Those employees submitted a claim protesting their ranking. On November 20, 2008, an agreement was reached providing that the relative ranking of the employees involved should be in accordance with the dates their final applications for employment were completed. Pursuant to that understanding, based upon the following dates of original applications or Apprenticeship Application Form completions, seniority dates were assigned as follows:

J. I. DeLong	2/23/04	8:48 A.M.
J. D. Ragland	2/25/04	6:58 P.M.
C. Haywood	4/02/04	6:59 P.M.
O. Garza	4/06/04	7:14 P.M.
D. S. Keltner	4/07/04	9:51 P.M.

This agreement resulted in a mix of what the Carrier had originally assigned and what the Organization had proposed. On April 29, 2008, the IBEW Local submitted a claim on behalf of DeLong, Ragland and Keltner stating that Rule 32 had been violated and asserting that they should have been placed ahead of Messrs. Haywood and Garza.

Rule 32 reads, in part, as follows:

- “(a) The seniority of each employe shall start from the time he first performs actual service in the craft or class in which employed with the Company as evidenced by clock or other registration. The seniority of two or more employed at the same time in the same seniority district will be determined by the order in which the final employment forms were completed. Such forms shall show the date and time completed.”

While there is room for honest debate on how the governing Rule applies to the facts of record due to the apparent tension between standards set forth therein,

in the view of the Board, the proper application of the Rule requires that Delong, Raglan and Keltner be ranked ahead of Haywood and Garza, and that their ranking should be in that order. Although hired on the same date as the Journeymen Electricians, Haywood and Garza finished their Apprenticeships and commenced work as Electricians long after Delong, Raglan and Keltner first performed actual service in the craft. Garza, for example, according to the record, finished his Apprenticeship of 976 days on April 11, 2008 and then established a seniority date of July 6, 2004, i.e., the same date the Journeymen Electricians were hired.

When there is apparent conflict in contract terms, the rules of construction require that competing provisions be reconciled when possible in ways that give meaning to all terms. Here, because it is clear that first performance is the primary test, and it is equally undisputed which employees first performed service in the craft or class, the spirit of the Rule is best honored by ending the analysis at that point. If the intended meaning of “employed at the same time” is pursued, and a ranking based upon completion of employment forms adopted, the results would require the Board to disregard or discount the plain meaning of the first sentence of the Rule. A more reasonable result in this instance would interpret the phrase “employed at the same time” to mean employed in the sense of performing work.

The claim is sustained. Kansas City Mechanical Department Electricians J. I. Delong, J. D. Ragland, D. S. Keltner, C. Haywood and O. Garza are to be ranked on the appropriate seniority rosters in that order.

AWARD

Claim sustained.

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.

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NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Dated at Chicago, Illinois, this 3rd day of November 2010.