

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: "(a) That Mr. W. J. Krauss, Signal Maintainer, should be listed on the January 1, 1939 seniority roster as No. 24, thereby having prior rights over H. E. Gottfried.

"(b) That the seniority roster should have been changed to conform to Rule 36 (a) of the present agreement when it was placed in effect."

EMPLOYEES' STATEMENT OF FACTS: "Rule 36 (a) of the current agreement provides that:

'Rule 36 (a). Seniority of employees in the various classes shall start at the time their pay starts in that class. A class will include employees covered by Rules 1, 2, 3, 4 or 5.'

"That the agreement in effect between the Pittsburgh and Lake Erie Railroad Company and the employees of the Signal Department as represented by the Brotherhood of Railroad Signalmen of America, effective August 16, 1923, superseded and annulled any and all other forms of agreement entered into between Carrier and employees prior to the effective date of the agreement.

"That when the agreement of August 16, 1923 was signed, the seniority status of all the employees should have been changed to conform to present Rule 36 (a).

"That W. J. Krauss did protest his relative ranking on the seniority roster and cognizance should have been taken of his protest in accordance with a proper application of Rule 36 (a)."

CARRIER'S STATEMENT OF FACTS: "W. J. Krauss was employed in the Signal Department as helped (laborer) on May 22, 1911, first worked as Assistant Maintainer or Assistant Signaller (helper) on April 1, 1912, performed first service as Signal Maintainer on October 1, 1912, but thereafter worked considerable time as Assistant Maintainer, and under the method used at that time in determining seniority datings, he (Krauss) was given a seniority date as maintainer of January 14, 1916.

"H. E. Gottfried was employed in the Signal Department as laborer on November 6, 1912, first worked as Assistant Maintainer or Assistant Signaller (helper) on March 1, 1913, performed first service as Signal Maintainer on June 16, 1913, but thereafter worked considerable time as maintainer and was given a seniority date of June 1, 1915, as maintainer.

of the men. Certainly this same committee, when the agreement was later negotiated, had not forgotten the method used in placing Maintainers on the roster, and that they had opposed any change in the 1921 standings. They evidently were of the same mind when negotiating the agreement in 1923.

"While General Chairman Doble has only raised the question of the seniority status of W. J. Krauss, the attention of your Board is directed to the fact that the principle involves many other signal maintainers and signalmen whose standing would necessarily have to be changed if a decision were made favorable to Krauss. General Chairman Doble checked the records as to the method used in 1920, to establish seniority of Signal Maintainers, and in his letter of August 19, 1939, to Chief Engineer Forsberg, stated in part:

'It further revealed that the seniority of Krauss had been computed on the same basis as every other man on the roster and to which I stated that they had evidently all been treated alike.'

"We have advised General Chairman Doble that we would be agreeable to change Krauss' and other signalmen's seniority if each individual employe on the Signalmen's roster whose seniority would be affected, would make an individual written certification that the change would be acceptable to him. To arbitrarily take seniority away from certain employes, we believe, would lead to litigation in the courts involving both management and organization.

"The standing of signalmen, as they appear on the roster, has been in effect for a period of eighteen years, and, as stated in the foregoing, was accepted by the Signalmen's Committee in 1921, and was undisputed at the time the agreement was executed in 1923.

"The argument of the committee in this case is based entirely on Rule 36 (a) of the agreement which became effective August 16, 1923—it being their contention that this particular rule should be retroactive to the dates employes entered service in the Signal Department. This same agreement contains forty-seven (47) rules, all of which were effective on the same date, i. e., August 16, 1923, covering all manner of working conditions, such as: hours, overtime, Sunday and holiday work, calls, home station, assignments, transfers, seniority, vacancies, meal period, expenses, qualifications, promotion, discipline and grievances, etcetera, etcetera, and to say one of these rules is retroactive to date employe enters service would make the effective date of the agreement meaningless.

"We think your Board will agree that rules are not retroactive unless specifically provided, and that the rules of an agreement can apply only from the effective date stipulated in the agreement, which in this case is August 16, 1923.

"Therefore the Management urges your Board to deny the claim."

OPINION OF BOARD: In the statement preceding this "Opinion" the factual situation is developed, and the contentions of the parties capably stated. Briefly, the controversy has to do with the relative seniority rights of two signal maintainers: W. J. Krauss, in whose behalf this claim has been presented, and one H. E. Gottfried. The carrier, proceeding on its interpretation of the facts and controlling rules, lists Gottfried as having such seniority from June 1, 1915, or as No. 24 on its roster, and Krauss with like seniority from January 14, 1916, as No. 26 on the roster. The man between them, No. 25, is a foreman. It is clear that Krauss was first employed as a signal maintainer October 1, 1912, while Gottfried was not so employed until June 16, 1913. Those dates considered, the brotherhood urges that Rule 36 (a), of the Agreement, effective August 16, 1923, is applicable and controlling. It reads: "Seniority of an employe coming within the scope of this agreement begins at the time the employe's pay starts in the class in which employed." The carrier, despite the rule, maintains that since these men were employed before the date of the Agreement, the roster which the carrier had prepared prior thereto should control. Before the Agreement the carrier

had fixed relative seniority on a different basis, stated at length in the record, pursuant to which Gottfried had superior seniority to Krauss, as already noted.

The question is, Does Rule 36 (a) of the Agreement, already quoted, vitiate the old roster of seniority? We are disposed to believe it does. It is urged that to effectuate such result it was necessary to provide to that end in the Agreement. We are not of that view. The parties to the Agreement of 1923, the carrier by its proper officers, and the brotherhood by its authorized representatives, were competent to make the Agreement, and its terms became binding upon the carrier and the employes as well, one and all. Instead of necessity for specific inclusion in the Agreement of the right to change former seniority rosters, reservation to continue such rosters, if that were thought to be desirable, as we perceive, would be the requirement. Seniority rules may well be the subject of working agreements, as, indeed, they usually are. It was so here, and the language employed in stating the basis of seniority is free from ambiguity. Unlike Award 379, cited by the carrier, where "from the evidence it is clear that it was not the intent of the parties to make the agreement retroactive," here there is no such evidence. There, too, claimant sought recovery of pay lost to him, as said, while here the sole relief demanded is that claimant be listed on the seniority roster in accordance with a specific provision of the working agreement. Of what importance it may be to claimant, or what rights he, or others, may attempt to predicate thereon, rests in speculation. The claim should be sustained.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon, and upon the whole record and all the evidence, finds and holds:

That the carrier and the employe involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the carrier has violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 16th day of December, 1940.

Dissent to Award No. 1269—Docket No. SG-1138

The Opinion of Board upon which the sustaining award in this case is based quite clearly comprehends the facts presented and thereupon declares retroactive application of the terms of an agreement to a period prior to the effective date of the agreement, despite that there was no provision in such agreement for retroactive application of its terms.

Briefly, the essential facts, in part cited in the Opinion and in whole appearing in the positions of the parties, are that about two years prior to the effective date of the agreement the roster showed the claimant in this case to be junior to the employe over whom he here claims rights. Though the claimant protested such standing more than a year prior to the effective date

of the agreement, he was advised in denial of his protest. Thereafter, the first and current agreement, effective August 16, 1923, governed in relation to these parties. A period of 11 years, or until April 12, 1933, followed the claimant's first and denied protest before anything further was heard of it. Another period of 4 years, or until March 6, 1937, elapsed thereafter without further protest.

Notwithstanding these circumstances, this award gives retroactive application to the 1923 agreement and presents the propriety or impropriety of such decision applied to this case for the judgment of any who will read.

This Adjustment Board is not a court of law; it deals with practical matters and it had before it here the practical situation of an employe, one H. E. Gottfried, having enjoyed seniority over the claimant in this case prior to the negotiation of any agreement which related to his seniority rights, which agreement was devoid of provision for retroactive application. He Gottfried, continued in the knowledge, as represented by no protest for ten (10) years after that agreement became effective, that he enjoyed seniority over the claimant in this case, and thereafter for four (4) additional years continued in retention of that seniority uncontested until this late and dormant current claim to rob him of his possession was instituted.

It is repeated that this is a Board constituted of lay members and the signatories to this dissent are such. They sincerely submit, however, in their best judgments that this award presents an impractical solution of the question and incorrect technical legal decision.

S/ C. P. DUGAN
S/ R. F. RAY
S/ A. H. JONES
S/ R. H. ALLISON
S/ C. C. COOK

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

**INTERPRETATION NO. 1 TO AWARD NO. 1269
DOCKET NO. SG-1138**

NAME OF ORGANIZATION: Brotherhood of Railroad Signalmen of America

NAME OF CARRIER: Pittsburgh & Lake Erie Railroad Company

Upon application of representatives of the Organization involved in the above award, that this Division interpret the same in the light of the dispute between the parties as to its meaning, as provided for in Sec. 3, First (m) of the Railway Labor Act, approved June 21, 1934, the following interpretation is made:

The determination in Award No. 1269 was twofold: 1, That the date when seniority of an employe begins (or shall have begun) is controlled by Rule 36 (a), quoted in the opinion; and, 2, that in contemplation of such conclusion, Krauss was deemed to have begun work October 1, 1912. His relative seniority therefore, is dependent upon that date and the dates when the pay of other like employes started. The parties agree that, in the relation mentioned, the status of other employes is not presently involved, nor has it been at any stage of this inquiry.

It is fitting, of course, that the Division should observe that limitation, which it does. In the interest of finality, however, if we may venture so much, it is suggested that ascertainment of seniority dates of the several employes potentially involved—the parties proceeding in amity to that end—ought not to be difficult.

Referee Benjamin C. Hilliard, who sat with the Division, as a member, when Award No. 1269 was adopted, also participated with the Division in making this interpretation.

**NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division**

**ATTEST: H. A. Johnson
Secretary**

Dated at Chicago, Illinois, this 21st day of February, 1942.