

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Benjamin C. Hilliard, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY

STATEMENT OF CLAIM: "Claim of Employees' Committee, first, that Henry Strassenburg and Gustav W. Olson, B. & B. Carpenters, laid off in force reduction January 6, 1938, and who were denied an opportunity to displace junior B. & B. Helpers then working, be paid at B. & B. helpers' rate for time lost because of not being permitted to exercise their seniority rights.

Second: that Rocco Martino, B. & B. Helper, laid off in force reduction January 29th, 1938, and denied the opportunity to displace a junior B. & B. Helper then working, be paid at B. & B. helper's rate for time lost because of not being permitted to exercise his seniority rights."

EMPLOYEES' STATEMENT OF FACTS: "Carpenters Henry Strassenburg and Gustav W. Olson were laid off in force reduction on January 6th, 1938. The following day, on January 7th, both Strassenburg and Olson called at the office of the Division Engineer, requesting an opportunity to displace junior carpenter helpers who were working. They were denied that opportunity. They were off in force reduction until March 22d, 1938, when they were called back to service.

"Bridge and Building Carpenter Helper Rocco Martino was laid off in force reduction on January 29th, 1938. On February 1st, Martino called at the office of Division Engineer, requesting an opportunity to displace a junior carpenter then working. He was denied that opportunity. Martino was called back for extra service on February 24th, 25th, 26th and 28th. He was called back for regular service on March 22d, 1938."

POSITION OF EMPLOYES: "Rule 5 of Agreement in effect between the Carrier and the Brotherhood reads:

'Rule 5. Seniority in Lower Ranks. An employe assigned to and qualifying in any rank shall be given the same seniority date in all lower ranks in the seniority group in which he holds seniority.'

"As will be observed from Rule 5, it specifically provides that an employe in any rank holds the same seniority date in all lower ranks in the seniority group in which he holds seniority. Thus a carpenter automatically holds seniority rights as a carpenter helper. We are attaching hereto as Employees' Exhibit 'A,' the seniority roster of employes in the B. & B. Department, Chicago Division, issued September 1, 1937, which was the governing roster at the time of the force reduction January 6th, 1938.

"As will be observed from that roster, Carpenter Henry Strassenburg is listed as No. 17, seniority date October 14, 1924. Gustav W. Olson is listed

"(3) That it is the duty of the representatives of the employes as well as that of the management to police the agreement to see that its provisions are lived up to.

"(4). That neither the employes nor their representatives protested in any way regarding the dates or rosters, in line with Rule 2 (d), and that, according to the seniority rosters for Group 1 (d)—B. & B. Helpers—the senior men were entitled to work in preference to Strassenburg, Olson and Martino, at least until correction was made by the management with the consent of the organization after complaint was finally made in April, 1938.

"We understand the representatives of the employes will present affidavits to the Board from these three employes to the effect that in January and February, 1938, they requested an opportunity to displace a B. & B. helper who was working at the time. First, we wish to submit that Mr. Martino never did make such request, nor has he filed a claim in proper manner; second, there were no junior B. & B. Helpers then working, on basis of the Group 1 (d) B. & B. Helpers' seniority roster and, therefore, the men in question had no right to displace other B. & B. Helpers at that time. As a matter of fact, our records do not indicate that any of them, prior to April, 1938, claimed that there were junior B. & B. Helpers working whom they could displace—they did ask as to when there might be some kind of work for them, that is all. Attached are affidavits from Messrs. H. G. Dennis, the Division Engineer in January, 1938, and Harold J. Dowling, Chief Clerk to Division Engineer.

"On basis of the fact that proper protests were not made by the employes or their representatives in accordance with Rule 2 (d) of the agreement, and these employes were allowed to perform work in accordance with seniority dates as carried on the seniority rosters in effect from time to time, their claim should be declined.

"Further, the carrier wishes to call attention to the fact that there should be limitations to claims not filed in a reasonable time, the principle being recognized in the fact that we negotiated and included in the present agreement of May 1, 1938, a provision that—

'Claims involving money payment will be presented as herein provided within ninety (90) days after reason for such claims are known to the employe; otherwise, such money claims will be waived.'

Therefore, it would be inconsistent to consider time claims filed in April retroactive to January of the same year and, further, attention is called to this Board's Award No. 684 to the effect that claims not presented to the carrier until after the conditions of which complaint is made had disappeared, constitutes one not cognizable by this Division of the Board. This opinion is reaffirmed in Award No. 942, Docket TE 905 of this Division of the Board."

OPINION OF BOARD: This docket has to do with the demand of B. & B. Carpenters who were laid off in force reduction January 6, 1938, but who were not permitted to displace junior B. & B. Helpers then working. A full statement, including pertinent rules of the Agreement, as well as the contentions of the parties, precedes this "Opinion."

Claimants enjoyed definite seniority rank as Carpenters, and the published roster of that activity correctly reflected their standing with relation to other Carpenters. By Rule 5 claimants were entitled to corresponding seniority in the Helpers' ranks, and had this "corresponding" rank been observed claimants would have displaced employes in the lower rank. The misunderstanding—and the record warrants no harsher term—arose out of the fact that by the published Helpers' roster, current at the time, claimants were so rated that none junior to them was then working. Neither party noted the erroneous rating at the time. The carrier, of course, should not have erred as indicated, but that it might err was contemplated in the Agreement

and provision was made for protest and correction. Rule 2 (d). Neither the claimants, nor anyone for them, made protest within the reserved time, nor does the record show that the error was detected in any quarter until some time after claimants were restored to Carpenter positions. That upon discovery of the error it was promptly noted by the carrier, and in the next roster claimants' true rank as Helpers appeared.

The record considered, we cannot think the claim is meritorious. While the original mistake was made by the carrier, claimants were lax in concern within the time when by the Agreement they should have protested.

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 employes involved in this dispute are respectively carrier and employes 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 claimants are concluded by their failure to take timely advantage of Rule 2 (d).

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

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