

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Royal A. Stone, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: "Protest against placing the name of G. R. Dunlap on Telegraph and Signal Department employees' seniority roster, Philadelphia Terminal Division."

EMPLOYEES' STATEMENT OF FACTS: "The name of Mr. G. R. Dunlap, Assistant Supervisor Telegraph and Signals, New York Zone, was placed on the Telegraph and Signal Department seniority roster, posted on the Philadelphia Terminal Division for the year 1938, as follows:

Signalman or Maintainer	Assistant Signalman	Helper T. & S.
3-21-11	3-21-11	3-21-11

"Mr. Dunlap last entered the service of the company on March 21, 1911, as a lineman on the Schuylkill Division and was promoted to the position of assistant foreman and telephone inspector, Allegheny Division, on August 1, 1920.

"Mr. Dunlap's service record shows as follows:

1-24-10—Tel. Inspr. Altoona
7- 2-10—LEFT SERVICE
3-21-11—Lineman, Schuylkill Division
9- 1-17—T. & T. Maintainer, Schuylkill Division
8- 1-20—Asst. Fore. & Tel. Inspector, Allegheny Division
2- 1-21—Asst. T. & S. Foreman
7- 1-21—T. & S. Foreman
12- 1-24—Asst. T. & S. Foreman
11- 1-28—Asst. Supervisor T. & S., Panhandle Division
2- 1-30—Inspector T. & S., New York Zone
8-16-34—Asst. Supvr. T. & S., New York Zone
1-10-36—Inspector T. & S., " " "
12- 8-37—Asst. Supvr. T. & S., " " "

"Effective May 16, 1932, that portion of the Schuylkill Division eastward of a point 500 feet west of Mile Post 19, west of Franklin Avenue, Norristown, Pa., became a part of the Philadelphia Terminal Division, at which time three (3) T. & S. Maintainers were transferred from the Schuylkill Division to the Philadelphia Terminal Division in accordance with agreement dated May 17, 1932, under Regulation 3-G-1."

POSITION OF EMPLOYEES: "Account of G. R. Dunlap holding various positions not covered by the existing agreement for many years prior to 1937,

CONCLUSION

"Therefore, the Carrier respectfully submits that the action taken in the instant case was not in violation of the agreement between the Carrier and the employes represented by the Brotherhood of Railroad Signalmen of America and respectfully requests your Honorable Board to dismiss the claim of the Employes in this matter.

"The Carrier demands strict proof by competent evidence of all facts relied upon by the claimants, with the right to test the same by cross examination, the right to produce competent evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same."

OPINION OF BOARD: Just to make sure that no one will assume that they have been overlooked, we say at the outset that the carrier's objections on the ground of jurisdiction have been examined and found without merit.

Again the question is one of seniority status. Mr. Dunlap's original seniority rights were confined to the Schuylkill Division. Effective May 16, 1932, a portion of that Division became by merger a part of the Philadelphia Terminal Division. At the same time, the remainder of the former Schuylkill Division went into the Wilkes-Barre Division. The allocation of employes to be transferred from the Schuylkill Division to the Philadelphia Terminal Division was a matter sought to be settled by a Memorandum of Agreement under date of May 17, 1932 between the carrier and a committee representing its telegraph and signal department employes.

Without further discussion of the rules, it is assumed that, without more, Mr. Dunlap might rightfully have elected that his seniority continue and accumulate on the Philadelphia Terminal Division. It is held that he lost that right because of what transpired by and as result of the Agreement made at the time between the carrier and the committee representing the employes.

These railroad-employee contracts are between the carrier on the one hand and the Brotherhoods on the other, each of the latter acting for and as the agent of all employes in the craft which it represents. The result is that the contracts are binding for and against the employes who have become parties to the Agreement through the action of their authorized agent, the Brotherhood.

In like manner, the contracts are subject to amendment or interpretation from time to time by Agreement between carrier and Brotherhood as representative of the employes within its power of representation.

When the Philadelphia Terminal Division absorbed a part of the Schuylkill Division, the subject matter of the employes to be transferred to the new division, and all the employes to be so transferred with their respective seniority rights, was made matter of negotiation and additional written agreement between carrier on the one hand and representatives of the employes on the other. Those representatives acted for all affected employes. Therefore, the group so represented included all employes affected in respect to seniority, whether at the moment they were or were not actually occupied on the Division. The Memorandum of May 17, 1932, can be given no other effect consistent with its language and plain purpose.

Pursuant to that Agreement "the Schuylkill Division individuals to be transferred to the Philadelphia Terminal Division" were determined and transferred accordingly. Dunlap was not included. Therefore he was excluded and unless the Agreement is to be given something less than its intended effect he cannot now claim seniority on the Philadelphia Terminal Division.

Although it has not been argued, this case has presented a question going to the very vitals of contracts between an employer and a union representing a large group of employes. That the union represents the employes as agent for the purpose of making the contract is undeniable. After the contract is made there may arise, and in this case there has arisen, a question

as to the extent which the union may go in modifying, or bargaining away by subsequent agreement, the vested right of any employe who is a party to or beneficiary of the contract. For the purposes of this case, it matters not whether in the case of Dunlap he be considered a party to the contract or merely a beneficiary of it. His seniority status was for him a vested and important, personal right. But it was one which he could bargain away, acting in person or through an adequately empowered agent. Was the Brotherhood, acting through the committee in this case, authorized to settle the question of Dunlap's seniority district?

That question is one of law. The Referee is reluctant to decide it without the benefit of argument from both sides. Absent such argument, he has not had the enlightenment which surely would come from it.

With that qualification, the holding is that the Brotherhood was within its power of representation in agreeing to the transfer from the Schuylkill to the Philadelphia Terminal Division of the three employes who were selected and transferred. By that process Dunlap lost whatever right he would have had otherwise to elect to transfer his seniority status to the Philadelphia Terminal Division.

This decision is a choice between the mandates of two opposed policies, the first of which is the traditional one of forbidding deprivation of rights without consent of the owners or opportunity given them to defend. That is the general and older policy. Superimposed upon it is the more particular and newer policy of the law of collective bargaining expressed in the Railway Labor Act.

If, as to this case, the old policy should prevail as against the newer one, this decision is wrong. If, on the other hand, the collective bargaining policy of the Railway Labor Act is to be given all of what seems to be its intended effect, a union such as a railway brotherhood must have, in its field, an unrestricted power of general agency, in the exercise of which it may modify and adjust the accrued rights of the employes which it represents. That is the theory of this decision.

There is an additional and subordinate factor worth mentioning. It is that expeditious settlement is needed for many, if not most, of the issues that arise between carriers and their employes. Expedition and finality are demanded in the interest of the public which both serve. As to questions of seniority, finality is essential so that both employer and employe may know exactly where they stand. Many times a prompt settlement, even though wrong in some respects, will be better for all concerned than the right settlement would be if long delayed. It is intolerable to have such an issue remaining open for long, with its possibility of injustice to others than employes immediately affected, and the resulting multiplicity of claims which the carrier may have to face. For the prompt settlement of such a problem, the mechanism of collective bargaining is admirably suited. It may not always work justice. Uniform and absolute justice cannot be expected of any process operated by the fallible minds of men. All that can be expected is as close an approximation to justice as the situation and the human agencies for its solution permit. Collective bargaining, as it has operated in this case, does promise expedition and finality. Both are highly important objectives.

In *Casey v. Brotherhood of Locomotive Firemen and Enginemen*, 197 Minn. 189, 192, 266 N. W. 737, a parallel case, Mr. Justice Loring, for a unanimous court, said this:

"Aside from contract, there is no inherent or fundamental right to preference by virtue of seniority in service. Therefore the matter of seniority or place upon the seniority list is subject to the contract between the parties. All seniority rights are held by the railroad employes by virtue of the contract which has been made on their behalf with the railroad company by the brotherhood. It was competent for

the brotherhood to contract in behalf of its members that under certain conditions there should be a readjustment of seniority rights and a reranking of a member upon the seniority list."

In that case the seniority rights of a fireman were drastically readjusted to his prejudice under a provision of a collective bargaining contract. That is precisely what has happened to Mr. Dunlap.

Realizing the importance of the question, the Referee invites testing by an action at law of what has been just said. Mr. Dunlap is in the position of one who, if this decision is sound, has lost a valuable personal right. An action by him, for a declaratory judgment to establish and confirm that right according to his contention, would quickly and at small expense get the matter determined judicially. After issue joined, the facts can be presented to the court by an agreed statement of them. Thus the whole issue may be easily subjected to the test of litigation, and a decision reached finally and authoritatively settling the matter.

In the event such legal action is taken to put the issue to the test of judicial determination, this decision is without prejudice thereto, its conduct or determination.

It should be added that Mr. Dunlap was given notice of this proceeding and pursuant thereto appeared personally before the Division.

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 employees involved in this dispute are respectively carrier and employees 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, because of the special facts of the case stressed in the opinion and in the manner stated, there has been a violation of the contract and Mr. Dunlap's right to choose the Philadelphia Terminal Division as his seniority district is lost.

AWARD

Claim is sustained with the stated qualification in respect to possible litigation to follow.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 19th day of May, 1941.