

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Elwyn R. Shaw, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MISSOURI PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Protest of the System Committee of the Brotherhood against the establishment by the Carrier of seniority date of November 14, 1932, for Joseph H. Pyle on the rosters of B. & B. employes on the Omaha Division; and

(b) That all employes adversely affected by the establishment of said date and the assignment of Joseph H. Pyle to work in accordance with said date shall be compensated for all monetary loss suffered.

EMPLOYEES' STATEMENT OF FACTS: Joseph H. Pyle was discharged by the Carrier in October 1939.

Under date of April 2, 1940 Pyle was returned to the service of the Carrier and assigned to a position of Assistant Foreman on the Omaha Division.

On May 1, 1940 the Carrier advertised for bids for a position of B. & B. Foreman. Under date of May 25, 1940 Pyle was assigned to the position, in preference to men holding seniority on the roster of 1940.

The Carrier has continued and permitted Pyle to hold assignment based on his original seniority date instead of the date he was assigned on bulletin position after reentering the service. This action on the part of the Carrier has caused other employes, who had been accorded a date on the roster of 1940 to suffer wage losses. Pyle was not accorded a date on the 1940 roster.

There is an agreement in effect covering the working conditions of the Maintenance of Way employes on this property, effective July 1, 1938, which is by inference made a part of this Statement of Facts.

POSITION OF EMPLOYES: Rule 1 of the current agreement reads as follows:

"Seniority begins at the time the employe's pay starts on the position to which assigned following bulletining of the vacancy as provided in Rule 11, ***,"

Rule 4 provides that:

"(a) Seniority rosters of all employes, in each sub-department by seniority districts, will be separately compiled and will show the name, classification and date of entry of the employe into the service, and date of promotion."

OPINION OF BOARD: There is no dispute as to the facts. Joseph H. Pyle was employed as a laborer with rank as Foreman and with seniority date of November 14, 1932 which had been established in conformity with the rules of agreement between the Maintenance of Way organization and the Missouri Pacific Railroad. On October 23, 1939 he was suspended from service pending formal investigation and charged with the violation of certain rules. On October 25, 1939 he was notified to appear for hearing at the office of the Division Engineer and stated that he did not want a representative. Thereafter on November 6, 1939 a formal investigation was held, and as a result thereof he was discharged from service. A little over three months later Pyle appealed to the Division Engineer for leniency and to be reinstated to the service. This occurred on February 26, 1940 after several interviews with Pyle and some letters which are not necessary to be considered. On April 3, 1940 Pyle was reinstated to the service as Assistant B. & B. Foreman and actually returned to service on April 5, 1940. On May 6, 1940 he was promoted to Foreman.

During the interim, while Pyle was actually discharged, his name appeared and was posted in the usual way on the seniority list, where his name appears as Assistant Foreman with seniority date as of November 14, 1932. This list must be presumed to have been posted on January 1, 1940 as that is the date required by the rules and nothing appears in the record to indicate that the rules were not followed. Under these same rules this list became final 90 days thereafter, or the latter part of March, 1940, for want of protest.

On May 12, 1940 bids were asked for a B. & B. gang, including Foreman, Assistant Foreman, Carpenters and Carpenter Helpers, and on this bulletin, May 23, 1940, Pyle was assigned to the position of Foreman. This assignment was bulletined under date of May 23, 1940.

About seven months after this assignment was bulletined, one C. C. Krecklow (seniority date 2-15-37) complained to his General Chairman protesting the seniority date credited to Mr. Pyle and the General Chairman under date of January 9, 1941 passed this protest along through various channels up to and including this present hearing. The bulletin of May 23, 1940 which had assigned Pyle as Foreman had also assigned Krecklow as Foreman to another gang. It is thus apparent that in May, 1940 if Krecklow saw the bulletin which assigned him to his position in Gang No. 4 he at the same time and by the same instrument saw that Pyle had been assigned as Foreman to Gang No. 5, and it is hard to discover any reason why he should wait more than seven months to protest Pyle's seniority.

On the seniority roster of January, 1940 Mr. Pyle's name appears as Assistant Foreman with seniority date of November 14, 1932. In that position he was junior to two other Assistant Foremen and senior to two others, neither of whom made any complaint. Krecklow's name appears on the same roster as a Foreman, and at that time he made no complaint of the way Pyle was listed. It is apparent that as far as Krecklow was concerned, and so far as Pyle's position as Assistant Foreman is concerned, the claim is stale and devoid of merit on any reasonable or equitable ground. Nothing appears in this record to indicate that any one was prejudiced or actually damaged by what happened.

There is no doubt that technically Pyle was out of the employment of the Carrier from the date of his discharge until his reinstatement. Neither is there any doubt that both Pyle and the Carrier treated this interim as a suspension and that both parties in good faith so considered it. Krecklow must also have considered it or he would have protested the 1940 seniority roster on which Pyle's name appears immediately adjacent to Krecklow's. The object of posting notices and bulletins is to give information to all concerned, what has been or is going to be done, and to give interested parties an opportunity to protest and be heard. If Krecklow wanted to protest Pyle's seniority date as Assistant Foreman he should have done so within the time and under the provisions of the rules and not a year later.

Pyle's seniority date as Assistant Foreman must remain as shown by the January, 1940 roster, viz. November 14, 1932. His seniority date as Foreman must be changed to May 23, 1940, a protest having been made in apt time after the posting of the January 1, 1941 seniority list.

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 Joseph H. Pyle's seniority date as Assistant Foreman must remain November 14, 1932; his seniority date as Foreman will be May 23, 1940.

We further find that prior to the appeal to this Board no claim for monetary compensation was made on behalf of anyone.

AWARD

Claim denied in part and allowed in part in accordance with the above Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 13th day of October, 1942.