

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that R. S. Everroad lost all seniority in the Regional Telegraph and Signal Gang seniority district, Western Region, that he had accumulated prior to March 20, 1939, and protest against the Carrier continuing his name on the seniority roster for that district with seniority earned prior thereto.

EMPLOYEES' STATEMENT OF FACTS: R. S. Everroad was employed as a signalman in Regional T. & S. Gang "D" located in the vicinity of Mooresville, Indiana, on Saturday, March 18, 1939. Shortly after quitting time that day he left the gang advising that he was going to his home in Columbus, Indiana.

Mr. Everroad did not return to work in the gang at Mooresville at the usual starting time, Monday, March 20, 1939, but sent word to his foreman that he had been picked up by a police officer in Columbus, Indiana, about 10:00 P. M., Saturday, March 18, 1939 and charged with driving an automobile while intoxicated.

On March 21, 1939 he pleaded guilty to the charge of driving while intoxicated and was sentenced to the Indiana State Penal Institution at Michigan City, Indiana, where he remained until released on July 4, 1940, a period of nearly 16 months. Shortly thereafter he returned to work as a signalman in Regional T. & S. Gang "D".

No leave of absence was granted Mr. Everroad by the Carrier during the time he was out of its service and Mr. Everroad did not report to the Carrier for one day's service during the period he was in the penal institution in order to protect the continuity of his service and seniority rights in spite of the carrier's expressed policy and requirements as shown in the letters marked as Brotherhood's Exhibits "A", "B" and "C".

While in the State Penal Institution, the Carrier continued Everroad's name and seniority date on the regional gang seniority roster and has declined to make any change therein. The seniority dates are:

Helper	11-22-22
Assistant Signalman	11-22-22
Signalman	1- 2-24

Protest against the continuance of Everroad's name on the Western Region, Regional Gang seniority roster was made to the Superintendent, Telegraph and Signals, on March 19, 1940. The protest was made within

The interpretation referred to was contained in Decision 78 of The Pennsylvania Railroad Telegraph and Signal Department Reviewing Committee, the subject matter of which read as follows:

"Bidding rights of furloughed and demoted employees."

The facts in Decision 78 were that a vacancy of Signalman had been advertised. No bids were received from men then working as Signalman; however, bids were received from a furloughed employe and three employes in active service working as helpers. The seniority of the furlough employe in the Signalman class was greater than that of the three employes in active service who had been reduced from Signalman to Helper. The seniority of the three Helpers in the Helper class was greater than that of the furloughed employe.

The joint position of the General Manager, Western Region, and the Brotherhood of Railroad Signalmen of America, among other things, was to the effect that when no bids are received from employes working in the class where the vacancy exists, the qualified employe with the most seniority (in the class where the vacancy exists), who is either working in a lower class or is furloughed from active service should be assigned to the position. The Telegraph and Signal Department Reviewing Committee, in its Decision 78, sustained the joint positions of the General Manager and the Brotherhood of Railroad Signalmen of America. A copy of Decision 78 is shown as Exhibit "A".

Thus in awarding Hinton, who was on furlough, a permanent position and notifying him to return to service, the Carrier acted strictly in accordance with the Agreement as interpreted by Decision 78, and when he refused to report for duty after repeated efforts had been made to have him do so, the only action the Carrier could take was to remove his name from the roster. As previously stated, the General Chairman did not disagree with the action taken against Hinton.

The Carrier submits, therefore, that the agreement reached as to the disposal of the Hinton case between the General Manager and the General Chairman was strictly in accordance with the applicable Agreement, and provides no support for the instant claim.

CONCLUSION: The Carrier has shown that under the Agreement, R. S. Everroad did not lose his seniority in the Telegraph & Signal Department by his absence from duty between March 20, 1939, and July 5, 1940, and respectfully requests your Honorable Board to dismiss the claim of the Employees in this matter.

OPINION OF THE BOARD: On March 18, 1939, one R. S. Everroad was employed as a Signalman with a seniority date as of January 1, 1924. On the aforesaid date, he was arrested and charged with driving an automobile while intoxicated. On pleading guilty, he was sentenced to the Indiana State Penal Institution where he remained until his release on July 4, 1940. On July 10, 1940, the Carrier permitted Everroad to return to work with his seniority unimpaired. The Organization contends that Everroad lost all his seniority rights which had accrued prior to March 18, 1939, because of his failure to report for duty in the manner that the Agreement requires.

The record shows that the Carrier required an employe on leave to report for duty at least one day in each nine months period. It also shows that Everroad and the Superintendent of the institution in which he was confined notified the Carrier of Everroad's inability to gain release within the time required and requested an extension of the date required to report. The Carrier took no action upon this request. When Everroad reported for work after June 1, 1940, the date upon which he was required by the Carrier to report, he was notified that an investigation would be held because thereof. The investigation was held on July 23, 1940, after which the Carrier assessed no punishment and ordered him to return to work.

The Organization contends that Rule C-3-C of the Agreement of July 1, 1928, sustains their position. It states:

"Rosters will be Revised in January of each year. An employee will have sixty (60) days from the date his name first appears on a roster to appeal his roster date or relative standing thereon, except that in case of an employee off on leave of absence, sickness, disability or suspension, at the time roster is posted, this time limit will apply from the date employee returns to duty. If no appeal is taken within the sixty (60) day period, future appeals will not be entertained unless the employee's roster date or his relative standing is changed from that first period. A note will be placed on each roster stating the time limit of appeal. Necessary corrections in roster will be made on the next issue."

That an appeal was taken within the sixty day period provided therefor is not disputed. But the rule contains no provision requiring the Carrier to remove Everroad from the roster as of March 18, 1939, or any other date. No rule of the Agreement has been pointed out which requires any such action on the part of the Carrier. It is true that the Carrier maintained a rule of its own that an employee must appear on the pay-roll of the Carrier once in each nine month period in order to preserve his seniority rights but this was for the protection of the Carrier in the operation of its road. There is no agreement that such rule must be uniformly applied, either in the assessment of discipline for its violation or in the granting of leniency after the violation is established.

The seniority rights of an employee have been held repeatedly by this Division to be valuable rights of which he could not lightly be deprived. While an employee may lose them by violating the operating rules of the Carrier because such action may be necessary to the maintenance of discipline, the Carrier may, in the absence of agreement to the contrary, overlook the violation, extend leniency or assess a lesser penalty than loss of seniority rights. And if the Carrier, in the management of its business sees fit to exercise this prerogative, other employees have no valid basis for complaint. The Carrier has full power to manage its employees except to the extent that it has limited itself by its own agreements. The violation of the Carrier's rule concerning reporting for duty was an offense against the Carrier and not against other employees where there is no agreement covering the subject. The Carrier clearly has the right under such circumstances to use its own judgment in dealing with such situations. It is only where discipline is assessed that there is anything for review by this Board in the absence of an Agreement provision requiring a different result. We find nothing in the applicable Agreement requiring the Carrier to comply with the claim here made by the Organization.

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 the applicable Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 10th day of July, 1946.