

Award No. 3442

Docket No. SG-3328

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

ERIE RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that Assistant Signal Supervisor M. J. Menzie is not entitled to a seniority date on the foremen's seniority roster and that his name and seniority date be removed therefrom.

EMPLOYEE'S STATEMENT OF FACTS: M. J. Menzie was shown on the original 1944 Marion Division seniority roster with seniority dates as follows:

Signal Helper	5-31-15
Assistant Signalman and	
Assistant Signal Maintainer	3-12-15
Signalman or Signal Maintainer	4-1-15
Signal Gang Foreman	4-1-18

Immediately prior to October 1, 1941 and for several years past, Menzie was the Signal Supervisor on the Western District.

On or about October 1, 1941 Signal Supervisor Menzie left the service of the Erie railroad and entered the employment of the Atlas Powder Company at Ravenna, Ohio. He did not secure the concurrence of the Brotherhood's representative for a waiver to that portion of Rule 41 of the agreement then in effect, which provides that an employee absent on leave, engaging in other employment, will lose his seniority. For ready reference Rule 41 is here quoted:

"Employees given leave of absence, by proper authority for six (6) months or less, will retain their seniority rights. Employees failing to return before their leave of absence expires will lose their seniority, unless proper extension has been obtained. An employee absent on leave who engages in outside employment will lose his seniority. Notice of leaves of absence will be furnished local chairmen."

On December 19, 1941, or about eighty days after he started work for the Atlas Powder Co., Menzie wrote a letter to the Employees' Representative asking that he be permitted to hold his seniority rights on the railroad while employed by the Atlas Powder Company.

Menzie's request for a leave of absence in this instance resulted in a voluminous record of correspondence and action between the management of the Erie Railroad and the representatives of the Brotherhood. Eventually the Brotherhood's contention that Menzie's name and seniority should be re-

The following protest was then received from General Chairman Wilson:

"Brotherhood of
Railroad Signalmen of America
8 Andrew Place,
Fairlawn, N. J.
September 5, 1944.

"Mr. W. S. Storms,
Signal Engineer,
Cleveland, Ohio.

Mr. C. K. Scott,
Engineer M. of W.,
Jersey City, N. J.

Mr. B. Blowers,
Engineer M. of W.,
Youngstown, O.

Gentlemen:

This is to advise that I have been instructed to protest the name of Mr. M. J. Menzie appearing on seniority roster covering Foremen of Maintainers (System), and seniority roster covering Signal Gang Foremen (Western District).

"Furthermore, in view of the fact that this is the first posting of seniority rosters covering Foremen of Maintainers, Signal Gang Foremen, and Foremen of Meadville Signal Shop, this is to advise that we are protesting the dates as shown until such time as records are produced and dates verified.

Please acknowledge receipt of this letter and advise your intentions.

"Yours truly,

(Sgd.) W. D. Wilson,
General Chairman—B.R.S. of A.
Erie System."

cc: Mr. I. H. Schram,
Chief Engineer M. of W.,
Cleveland, Ohio."

On September 8, 1944, with respect to Mr. Menzie, General Chairman Wilson was informed that Mr. Menzie was holding an official position June 1, 1944 and that under Article 4, Rule 32, he retained the seniority rights previously established in these classes and that he was properly reported on the rosters.

Mr. Wilson's only reply in connection with the situation was that he could not agree, inasmuch as Mr. Menzie had not been employed as a Foreman since leaving the Erie Railroad, although Rule 32, as incorporated in the agreement, was definitely designed for the very purpose of protecting the seniority rights previously established as Foreman of Maintainers and Signal Gang Foreman.

Thereafter, on February 5, 1946, General Chairman Wilson advised that the question of Menzie's name appearing on Foremen's rosters was being progressed ex parte to the National Railroad Adjustment Board for a decision.

OPINION OF BOARD: In order that we may answer the questions here presented, it is necessary to determine Mr. Menzie's rights and status, if any, first under the Agreement effective November 1, 1935, and then his rights, if any, under the Agreement effective June 1, 1944.

For the purposes of this opinion, Mr. Menzie's classifications and seniority rights are put in two groups. He held seniority under the classifications of Signal Helper, Assistant Signalman and Assistant Signal Maintainer

and Signalman or Signal Maintainer, the last with seniority date of April 1, 1915. This group we will refer to as Group 1. He also held seniority as Signal Gang Foreman with seniority date of April 1, 1918, and Foreman of Maintainers with seniority date of October 28, 1920, and classifications with higher rating up to Assistant Signal Supervisor with seniority date of August 16, 1941. This group we will refer to as Group 2. Admittedly, the Group 1 classifications come within the scope of the 1935 Agreement. Admittedly the Group 2 classifications do not.

On November 1, 1941, Menzie, then serving as an Assistant Signal Supervisor, was granted a leave of absence by the Carrier to accept work at the powder company, as set out in the submission. This leave of absence was continued until he returned to the employment of the Carrier on September 3, 1943, as Assistant Signal Supervisor.

The Organization contends that Menzie lost all rights under both Group 1 and Group 2 classifications by leaving the employment of the Carrier on November 1, 1941, because the granting of the leave of absence was contrary to the provisions of the 1935 Agreement. The Carrier contends that he lost none of his seniority rights in the Group 2 classifications because those classifications were not within the scope of the 1935 Agreement.

It is clear from General Chairman Wilson's letter of January 8, 1942, and Grand President Lyon's letter of May 4, 1942, that they were refusing to approve "a leave of absence, with continuance and accumulation of **'seniority rights in the seniority classes covered by the signalmen's agreement for former Signal Supervisor Menzie.'**" (Emphasis supplied.) Obviously they recognized that they had no concern with seniority classes not covered by the agreement, and that means no concern with the classes in Group 2. Just as obviously the Carrier throughout recognized the seniority rights of Menzie in the Group 2 classes, and was determined to protect them.

We are of the opinion that Menzie's Group 2 classes of seniority rights were not lost, forfeited, or taken from him by the protests or provisions of the 1935 Agreement. We further are of the opinion that it is immaterial, to a determination of the question here presented, whether or not he lost all his rights under the classes in Group 1. And that for this reason, his rights, if any, here in issue stem from his Group 2 classes and seniorities. We further are of the opinion that when Menzie returned to the Carrier's employment on September 2, 1943, he did so with Group 2 classes seniority rights preserved and unimpaired. That status continued.

On June 1, 1944, Menzie then had his classification with seniority as a signal gang foreman and foreman of maintainers, and then was occupying the position of assistant signal supervisor. Neither his position then occupied, nor the positions of signal gang foreman and foreman of maintainers were within the scope of the 1935 Agreement. They were without the agreement and not controlled by it.

Effective June 1, 1944, foreman of maintainers and signal gang foremen were brought within the scope of the Agreement of that date (Article 1). Effective that day rosters controlled by the 1944 Agreement were created by Rule 32. The rule further provided: "Foremen of maintainers, signal gang foremen or Meadville signal shop foreman **now** holding official positions with the railroad or with the B. R. S. of A. shall also hold seniority previously established in their class and all lower classes and will have seniority rights on the foremen of maintainers', signal gang foremen's or Meadville signal shop foreman's rosters as of the date they were last promoted to a position in such class." This provision clearly covers Mr. Menzie's situation. On June 1, 1944, he was a foreman of maintainers and a signal gang foreman, and was then holding an official position with the Carrier. The rule clearly accords to him the right to hold seniority on the foreman of maintainers' and signal gang foremen's rosters as of the date last promoted to a position in each class. The date of the promotion is not in dispute.

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 Assistant Signal Supervisor M. J. Menzie is entitled to a seniority date on the foremen's seniority roster, and his name and seniority date should not be removed therefrom.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 17th day of February, 1947.