

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

**DULUTH, MISSABE AND IRON RANGE RAILWAY
COMPANY**

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that Conrad E. Lind, Stanley F. Paczynski, Joseph Vukelich, Howard Wood and all others similarly affected be given their proper seniority dates on seniority lists covering ore dock employes, in accordance with the provisions of current Agreement effective October 1, 1945.

EMPLOYES' STATEMENT OF FACTS: Prior to August 6, 1940, ore dock employes involved in this dispute were represented by the Steel Workers Organizing Committee of the Committee of Industrial Organization, and an agreement negotiated between that organization and the carrier covering ore dock employes effective September 1, 1938, remained in effect until October 1, 1941, when superseded by an agreement negotiated between the carrier and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes.

During the Fall of 1936 the carrier hired approximately thirty dock laborers each of whom were required to sign a written statement waiving all rights to seniority, some of whom worked thirty days or more prior to the close of that shipping season while others were employed for less time.

With the opening of the 1937 ore season the Committee representing the ore dock laborers entered into the following Memorandum Agreement with the carrier:

"Agreement between
The Duluth, Missable and Northern Railway Company
and
Committee Representing Ore Dock Laborers Employed
on Missabe Division
Duluth, Minnesota,
April 1, 1937

1st—It is agreed that anyone hired for work on the Ore Dock after the date of this agreement will not acquire any seniority except as provided for

properly posted each year in accordance with Agreement rules, the first protests from the employees are as follows:

Conrad E. Lind	May 27, 1942
Stanley F. Paczynski	May 25, 1941
Joseph Vukelich	April 28, 1942
Howard Wood	April 27, 1942

(Photostatic copies shown as Exhibit "D").

The Carrier contends that all protests are in violation of rules quoted above and regardless of other reasons given herein, employees lost all opportunity for correction of seniority date by failure to comply with Agreement rules.

The Carrier wishes to briefly sum up its position and to request that the claim of the employees be rejected for the following reasons:

(1) This is a duplicate case to Award 1408 decided in favor of the Carrier.

(2) As shown by Exhibit "B", the employees definitely agreed they were not to acquire seniority.

(3) By Exhibit "C", it is shown that the hiring of temporary employees without acquiring seniority was an agreement with the then duly accredited representatives of the employees.

(4) By failure to question or protest their seniority date as shown on seniority lists as provided in the 1938 and 1941 agreements, the employees lost their rights to protest at this time, shown by Exhibit "D".

As to that part of the employees' claim in which they want the decision to apply to "all others similarly affected", the Carrier contends that it is not a proper submission and should be given no consideration. The Carrier contends to properly answer such a claim for seniority it must have the record of each individual employee involved.

The Carrier respectfully requests that the claim of the employees be denied.

OPINION OF BOARD: The Organization contends that employees Lind, Paczynski, Vukelich, Wood and others similarly affected, are entitled to have their seniority dates fixed in accordance with the current Agreement.

On April 1, 1937, the Carrier entered into an agreement with a committee representing Ore Dock Laborers. It was therein agreed that the seniority list would be limited to 135 employees and that this list would be maintained by the Carrier from the temporary men hired under the Agreement. It further provided that whenever an employee is added to the seniority list, his seniority would date from the day he first worked as a temporary employee. On April 18, 1937, about thirty men including the four named in the claim were employed and required to sign a statement in the following language:

"We, the undersigned, understand that we are being given temporary employment and that we are not on the seniority list and that we gain no seniority from the present employment."

On September 1, 1938, the ore dock laborers were represented by the Steel Workers Organization Committee of the C.I.O. and an agreement was negotiated as of that date which remained in effect until October 1, 1941. On the latter date, the initial agreement between the Carrier and the Clerks Organization was negotiated. This remained in effect until October 1, 1945, when the current Agreement was made.

The Carrier contends at the outset that the claim is conclusively settled by our previous Award 1408. We do not think so. That decision involved a case which arose when the Agreement of April 1, 1937, was in effect. Clearly,

the employes in that case who had signed the state of April 18, 1937, hereinbefore quoted, obtained no seniority rights under the Agreement of April 1, 1937, because the contingency had not occurred which gave them seniority rights under it and this Division so held. The employes in the present case are claiming no rights under that Agreement. The present claim is founded on the Agreement of October 1, 1945, and agreements immediately prior thereto, that were non-existent when the dispute decided in Award 1408 arose.

It is evident that these named claimants could gain no seniority rights under the Agreement of April 1, 1937, until they were placed on the seniority list by the Carrier in accordance with Paragraphs 2 and 3 of that Agreement. The named claimants were not added to the seniority list during the life of the April 1, 1937 Agreement, consequently they never were entitled to a seniority date under that agreement.

On September 1, 1938, a new agreement was negotiated for Ore Dock Laborers with the Steel Workers Organizing Committee of the C.I.O., representing the employes. This agreement provided:

"The seniority date of any employe will be the time the employe last entered the service of the company on the ore docks, disregarding seasonable lay-offs or other breaks in service over which the employe had no control." Rule 5.

During the life of the foregoing agreement, these named employes were recalled to work after having been laid off by force reduction for a considerable period. The record shows that this long lay-off was one over which the employes had no control. Consequently, under the provisions of Rule 5, they were entitled to a seniority date as of the date the employe first entered the service of the company on the ore docks, there being no evidence that they ever laid off except as a result of force reduction.

The record shows that the Carrier gave these named employes seniority dates as of 1939, the dates they were recalled to work on the ore docks, and protests were made against the Carrier's action in so doing. The record discloses that the processing of these protests was held up because of a dispute as to whether the Third or Fourth Division of the National Railroad Adjustment Board had jurisdiction of the agreement with the ore dock laborers. This jurisdictional dispute was not settled until September 17, 1940, when Award 1186 was made by this Division.

On October 1, 1941, a new agreement was negotiated with the Clerks' Organization representing the ore dock laborers. The roster was next posted on April 1, 1942, in accordance with that agreement. The named claimants protested the seniority dates given them on this roster in writing within the 60-day period required by the rules. The Agreement of October 1, 1941, provided:

"Except as provided in Paragraph (b) of this rule any Paragraph (a) of Rule 6, the seniority date of any employe on the General Seniority Roster will be the time the employe last entered the service of the company on the ore docks, disregarding seasonal lay-offs or other breaks in service over which the employe had no control. Rule 3(a), 1941 Agreement.

This rule, the exceptions therein specified not being applicable to the present dispute, did not change the seniority date of any employe who had acquired seniority rights under the Agreement of September 1, 1938. Nor, did the current agreement under date of October 1, 1945, have that effect.

Consequently, the correct seniority dates of the named claimants is the date on which they first entered the service of the Carrier on the ore docks as shown by the Carrier's payroll.

The claim in the present case includes the words "and all others similarly affected". The Carrier contends that the claims of others similarly affected cannot be considered. Rule 3 of September 1, 1938 Agreement provides:

"Seniority rosters of all persons holding rights as Ore Dock Laborers will be posted April 1st of each year, in a place accessible to dock laborers. Rosters will be open to protest for a period of thirty (30) days from date of posting. Upon presentation of proof of error by an employe or his representative, such error will be corrected. If no protest is presented within thirty (30) days the dates will stand as official and thereafter will not be subject to protest upon any future roster except that any typographical error will be corrected."

The 1941 and 1945 Agreements contain substantially the same rule, the only major difference being that sixty days is allowed for the filing of protests. This rule clearly means that unless an employe or his representative protests the seniority date given him on the posted roster within the time specified, the stated seniority date will be considered the correct one. There is no evidence in this record that any of the other employes not named complied with this rule. If they failed to protest within the required time, they have no claim. If an employe can establish by proof that he protested his posted seniority date within the time allowed, he can find support for an affirmative award in this case if his situation is otherwise similar to those of the named claimants herein.

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 the Agreement was violated.

AWARD

Claim sustained to the extent shown in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

Dated at Chicago, Illinois, this 22nd day of May, 1947.