

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Grady Lewis, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: (a) Claim that seniority dates in the foreman's class for Messrs. J. A. Smailes, C. P. Huth, P. J. Irvin, O. M. Wiland, D. L. Moore, and W. W. McMichael were improperly inserted on the Supplemental Panhandle Division Seniority Roster posted February 15, 1945.

(b) Claim that seniority, as shown below, in the foreman's class for

J. A. Smailes	12-16-1926
C. P. Huth	3-28-1927
P. J. Irvin	4-16-1927
O. M. Wiland	4-16-1938
D. L. Moore	4-1-1940
W. W. McMichael	5-29-1940

be removed from the Panhandle Division seniority roster covering telegraph and signal department employees.

EMPLOYEES' STATEMENT OF FACTS: Provisions were agreed to in the current Telegraph and Signal Department agreement to cover inspectors, assistant inspectors, foremen, and assistant foremen. It was further provided that their seniority in the foreman's class was to appear on subsequent seniority rosters covering Telegraph and Signal Department employees, with certain exceptions as provided in Section 2 of Article 4 in the current agreement.

For ready reference, we are quoting Section 2, Article 4, from the Telegraph and Signal Department agreement, bearing effective date of June 1, 1943:

"(a) Employees occupying a position in group (a) listed in Section 1 of this Article (foreman class) on the effective date of this agreement shall acquire and accumulate seniority in the foreman class from the first day they occupied a position in the foreman class subsequent to the last date on which they commenced employment with this company, except as provided in paragraphs (b) and (c) of this Section.

"(b) An employee occupying a position in the foreman class on the effective date of this agreement on a seniority district other than that on which he first held a position in the foreman class (hereinafter referred to for the purpose of this Section as his home seniority district) shall be given an opportunity to choose (within 3 months subsequent to the effective date of this agreement) the seniority district on which he desires to retain and continue to accumu-

agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

CONCLUSION

The Carrier has shown that under the specific terms of the Agreement it was required to show the names, seniority dates, and rank in the Foreman Class of the individuals involved and, therefore, the removal of said names from the Panhandle Division roster as requested by the Employees would be contrary to the terms of the Agreement.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees 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. Oral hearing is desired.

(Exhibits not reproduced.)

OPINION OF BOARD: Six employees of carrier, occupying positions excepted from the scope of the agreement effective June 1, 1943, were accorded seniority dates in the foreman's class on a roster, designated as "Supplemental Panhandle Division Seniority Roster," posted February 15, 1945. Each of the employees affected had held assignment in the foreman's class on the Panhandle Division, and held seniority dates for such assignments under agreement between carrier and another bargaining agent, previously negotiated.

Carrier contends that by provision of Section 13, Article 4, the inclusion of the names of the six employees in question on the seniority roster for foreman's class, with date of seniority to that class as established under the previous agreement is right and proper.

The section relied upon by carrier reads as follows:

ARTICLE 4—Section 13

"(a) An employe accepting or who has accepted promotion to a position in the telegraph and signal department not covered by this agreement shall retain and continue to accumulate seniority on the operating division from which appointed, and if he returns to the service covered by this agreement he may exercise his seniority in accordance with the provisions of Article 4, Section 8, or Article 4, Section 20."

The Brotherhood says that the provisions of Section 2 of Article 4 govern the appearance of names on seniority rosters in the foreman's class and that Section 11 (c) of Article 4 is controlling in the matter of making protests of errors on seniority rosters. The affected portions of Section 2, Article 4, are paragraphs (a) and (d) thereof. They read:

ARTICLE 4—Section 2.

"(a) Employees occupying a position in group (a) listed in Section 1 of this article (foreman class) on the effective date of this agreement shall acquire and accumulate seniority in the foreman class from the first day they occupied a position in the foreman class subsequent to the last date on which they commenced employment with this company, except as provided in paragraphs (b) and (c) of this section.

"(d) The seniority in the foreman class of employees who are not occupying positions in the foreman class on the effective date of this agreement, but who are subsequently assigned to positions in such class, shall date from the first day they occupied a position

in the foreman class subsequent to the last date on which they commenced employment with this company."

We cannot find in this language the meaning claimed for it by the Brotherhood. Paragraph (a) is clearly dealing with employees who were, on the date of the agreement, occupying positions in the foreman's class. And as to that class of employees the paragraph does nothing more than fix a date from which such employees may reckon their seniority. The provision does not, in any way, limit the list of names of employees eligible for inclusion on the seniority roster.

Nor does paragraph (d) preclude the inclusion of the names in question on the roster. That provision fixes a date for the reckoning of seniority of employees who may be subsequently assigned to positions in the foreman's class. This covers employees who are, for the first time, occupying positions in that class. It does not cover any employee who has previously been assigned to such position, since such employee would already have had a seniority date fixed corresponding to the date of the previous employment in that class.

An examination of Section 13 of Article 4 shows that the entire section deals with the subject of retention of seniority by promoted employees who accept, or who have theretofore accepted, promotion in the telegraph and signal department to a position not covered by the scope of the agreement. The expression "or who has accepted promotion" in paragraph (a) includes employees in the status of those here in question and requires that they be placed on the seniority roster for the foreman's class.

The effect of the brotherhood's further argument is that since these employees were not carried on the 1944 nor the original 1945 seniority rosters, as prepared by carrier, that by operation of Section 11, Article 4, any right they may have had to inclusion on the roster is lost to them.

Examination of the record discloses that the question of making up a seniority roster for this class was the subject of correspondence and conferences between carrier's representatives and the general chairman of the brotherhood from as early as July 13, 1943, until the supplemental roster was completed. The matter of whether the names of these employees should appear on the roster of seniority districts other than the one on which they first held a position in that class, or whether they should appear only on the roster of the operating division from which promoted or on all the operating divisions in which they had been employed, as well as whether, in the event they returned to a position covered by the agreement they be given an opportunity to choose the seniority district on which they desired to retain and continue to accumulate seniority was subject of a proposed memorandum of agreement submitted by carrier to the general chairman in an attempt to properly and finally complete the seniority roster for this class. The withholding of these names from the roster was occasioned, therefore, by the situation created by the negotiation of the new contract and the attendant necessity of compiling a new seniority roster. It is not unreasonable to assume that these employees affected knew all about the correspondence and conferences concerning the making of the roster and felt secure in the belief that, in due time, the roster would be finally and properly completed. The agreement placed no limitation on the time the roster was to be initially completed, and it did provide for its revision each year "as of" January 1st, not "on" that date. The supplementary roster could well be considered a revision of the roster. In any case a seniority roster is but the evidence of an employee's seniority. The roster does not create nor confer seniority, it is but a formal recognition of the existence of seniority. And the inadvertent or improper leaving of an employee's name off a roster does not destroy seniority. That valuable property right is not dependent upon the whim or caprice of a scrivener.

By reason of all of which, and under the full circumstances here, nothing has intervened to deny these employees proper recognition of their seniority on the seniority roster for this class.

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 no rule of the agreement is violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary

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