

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Edward F. Carter, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

CHICAGO AND NORTH WESTERN RAILWAY COMPANY

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

- (a) The Chicago and North Western Railway Company violated and continues to violate the provisions of the current agreement on rules when it assigned to R. J. Moras, at Escanaba, Michigan, June 6, 1937, as his seniority date as train dispatcher instead of assigning to him a seniority date in accordance with the intent of Rule 12 of the schedule agreement.
- (b) The Chicago and North Western Railway Company now assign to R. J. Moras the seniority date as of August 25, 1939, which is the 91st day on which the said R. J. Moras performed train dispatching service after having completed 90 days of such service.

EMPLOYEES' STATEMENT OF FACTS: In its Escanaba, Michigan, train dispatching office, the Chicago and North Western Railway Company, hereinafter referred to as the Carrier, maintains a force of train dispatchers and as of January 1, 1947, the seniority roster for that office lists eight names together with location and seniority dates of those train dispatchers holding seniority rights at that place. A copy of that seniority roster is appended hereto as Employees' Exhibit TD-1.

In the agreement rules governing hours of service and working conditions between the Carrier and its Train Dispatchers, the following rules therein, and pertinent to this dispute, are:

"SENIORITY DATUM AND LIMITS.

12. (a) A train dispatcher's seniority will date from the time he last entered service as train dispatcher on the seniority district where employed, **except that those promoted from other departments must perform ninety days actual train dispatching before being given a seniority date, such date to be the date next succeeding day on which the ninety days actual train dispatching is completed.** This provision does not affect train dispatchers whose seniority datum was established prior to September 1, 1926." (Emphasis supplied.)

"SENIORITY ROSTERS.

"(c) A complete list of all train dispatchers on each seniority district, showing date last entering dispatching service on such seniority district, will be kept on file in each dispatching office and will be open to inspection of train dispatchers affected.

OPINION OF BOARD: The Carrier assigned Train Dispatcher R. J. Moras a seniority date of June 6, 1937. It has been carried on all subsequent rosters without protest having been made by anyone until June 29, 1947, when the Organization protested the date on behalf of Train Dispatcher Y. F. Johnson. Johnson's seniority date is June 30, 1942, but due to the terms of the Agreement which gives seniority preference to one having accrued seniority, Johnson is adversely affected if Moras retains the seniority date assigned. It is conceded that Moras should have been assigned a seniority date as of August 25, 1939, and that the actual date assigned was in error. The Organization asks that the Carrier be required to correct the erroneous seniority date.

The only rule we need consider here is the applicable portion of Rule 12(c), current Agreement, which states:

"Seniority rosters will be revised in January of each year and will be open to protest for a period of sixty days from date of posting. Errors in the dating of employees whose names appear on roster for the first time, or errors in carrying record forward from previous rosters, will be corrected upon presentation of proof."

It is plainly stated in this rule that errors in the dating of employees whose names appear on the roster for the first time will be corrected if protest is made within sixty days. No protest was made and Moras' seniority date of June 6, 1937, became final under the express provisions of the Agreement.

The Organization contends that Train Dispatcher Johnson is not bound by the rule for the reason that he had never been given a right to protest, he not having acquired any rights under the Agreement until June 30, 1942. It is further argued that seniority is a property right of which Johnson cannot be deprived without notice.

This argument is not valid. All persons within the scope of the Agreement are barred from contesting Moras' seniority date by their failure to protest within the sixty day period which the Agreement allows for this purpose. Johnson was not one of those because he never became a party to the Agreement, until June 30, 1942. But when he elected on that date to become a party to the Agreement, he must accept it as he then found it with all existing interpretations, decisions and attributes. He may not, as a new party to the Agreement, disturb rights which have become settled. To permit such action would leave every dispute forever open and unsettled as each new employee affected by it brought himself within the scope of the Agreement. Confusion would succeed order in the administration of the Railway Labor Act if this were not so. The claim of the Organization has no merit.

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 Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 12th day of July, 1948.