

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

A. Langley Coffey, Referee

PARTIES TO DISPUTE:

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

ILLINOIS CENTRAL RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

1. The name of E. L. Marsalis, presently employed by Carrier as Assistant Car Foreman at Vicksburg, Miss., is improperly shown on the Clerks' 1948 Roster with date of April 20, 1934.
2. His name be removed therefrom.

EMPLOYEES' STATEMENT OF FACTS: Mr. Marsalis entered the service of the Carrier as a Clerk in the Mechanical Department, Vicksburg, Miss., April 20, 1934. His clerical services terminated August 3, 1937 on which date he was transferred to another branch of service with the Carrier. Subsequently he was employed by the Carrier as a Carman Apprentice at Vicksburg on November 8, 1937. He completed his apprenticeship as a Carman July 8, 1938 whereupon he was employed as a Carman until April 5, 1942 on which latter date he was appointed to position of Assistant Car Foreman and still is so employed.

The January 1948 Seniority Roster of employes embraced within the Scope Rule of our working conditions Agreement with the Carrier, effective June 23, 1922, revised September 1, 1927 recorded Mr. Marsalis' name thereon with seniority date of April 20, 1934. Employes' protest was filed with the Master Mechanic on January 25, 1948. (Employes' Exhibit No. 1).

February 19, 1948, Master Mechanic declined our request that Mr. Marsalis' name be removed from the clerical employes' seniority roster. (Employes' Exhibit No. 2).

The grievance was subsequently handled through channels provided therefor under our rules agreement with the Carrier and appealed to the Manager of Personnel Mr. Willingham on Jan. 10, 1949. (Employes' Exhibit No. 3). The case was discussed in conference Jan. 26, 1949 and not composed.

POSITION OF EMPLOYEES: That the continuation of Mr. Marsalis' name on the clerical employes' seniority roster with seniority date of April 20, 1934 (Employes' Exhibit No. 4) is violative of the rules of our working conditions agreement with the Carrier, particularly Rules 1, 3, 4, 5 and 6, which Agreement by this reference thereto is made a part hereof. The

that you please remove the name of Mr. E. L. Marsalis from the Clerks' Seniority Roster of the Vicksburg Shop Jurisdiction.

"Kindly let me have your decision in the matter.

"Yours very truly,

/s/ J. C. Daunoy
Division Chairman
1045 Louisiana Ave."

As stated by Division Chairman Daunoy, the name of E. L. Marsalis appeared on each Vicksburg Shop Clerical Roster from 1934 to 1947, inclusive, before a protest was registered. The Carrier did not, and does not now, feel justified in removing E. L. Marsalis' name from the Clerks' Seniority Roster as he has been continuously employed by this Carrier, and as he is now occupying an excepted and/or official position with this Carrier, he is within the provisions of Rule 21 and Memorandum of Agreement thereto effective January 1, 1943.

There is nothing exceptional or unusual about an employe holding seniority rights under two different seniority rosters and/or crafts because there has existed just such arrangement for several years particularly, when occupying an official or excepted position. As illustration, engineers hold seniority on firemen's rosters; conductors hold seniority as brakemen, telegraphers hold seniority as dispatchers, firemen and oilers hold seniority in other crafts, etc. If such an employe is promoted to an excepted or official position, he retains all rights; continues to accumulate seniority on the district from which promoted; and, his name is shown on the seniority rosters.

Rule 21 of the agreement is unambiguous. It specifically states employes promoted to excepted or official positions shall retain all their rights and continue to accumulate seniority, and the interpretation to this rule was made in January 1943 and stipulated that "No exceptions will be taken to the application of the rule and interpretation prior to January 1, 1943." To deprive Claimant Marsalis of his clerical seniority, rightfully established many years ago, would be in completed disregard and disagreement with Rule 21.

Absence of complaint from the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station employes prior to 1948, and the agreement with that Organization, effective January 1, 1943, on Rule 21, perpetuates the status existing as of that date. Mr. Marsalis on January 1, 1943, was on an excepted position and no exception was taken to his clerical seniority on rosters posted in January of each year from 1935 to 1947, inclusive. When he leaves his present excepted position, he must then decide as to which of the rosters on which his name appears he will return to work, or obtain leave of absence; otherwise, he will at such time forfeit his seniority on one roster or the other.

Carrier respectfully requests Board to deny the Brotherhood's claim.
(Exhibits not reproduced.)

OPINION OF BOARD: There is no dispute that the subject employe's seniority date as a clerk is April 20, 1934. The question at issue is whether or not, under the subject agreement, he has continuously, since that date, retained and accumulated seniority on the Clerks' seniority roster covering Vicksburg, Miss. Shops.

From April 20, 1934, to October 23, 1934, a period of six months and eight days, he occupied a scheduled position under the Clerks' Agreement. His service record shows that on October 29, 1934, he accepted a position as Carman Apprentice, a scheduled position under the Carman's Agreement with the Carrier, and continued on that assignment until March 1, 1936, when he was brought back under the Clerks' Agreement in an excepted position, where

he remained until November 8, 1937, when he again went back under the Carmen's Agreement into his old position as Carman Apprentice. From that point on he never came back under the Clerks' Agreement, but remained under the Carmen's Agreement in scheduled, excepted or official positions.

Seniority and the rights attendant thereon are matters of contract. The property right in seniority of an individual employe under a collective bargaining agreement made, or existing, under authority of the Railway Labor Act is of limited character. It exists only by virtue of an agreement between a properly accredited representative of the Employes and the Carrier. Award 844. Therefore, we must look to the rules of agreement for settlement of the dispute.

First, attention is called by both parties to Rule 5, reading:

"Seniority rosters of all employes in each seniority district, showing names, locations, dates of employment and dates of seniority will be posted January 1st of each year, subject to claim for correction by employes interested. Unless a written protest is made within thirty (30) days from date of posting, dates will not thereafter be changed.
* * * * *

When the seniority roster was posted for the year 1943, the Organization, on January 25, 1943, protested in writing the name of the employe whose seniority is questioned and requested that his name be removed on the grounds that the employe was no longer working under the provisions of the Clerks' Agreement but, on the other hand, was employed within the purview of the Carmen's Agreement with the Carrier, there holding No. 39 as a mechanic on the Vicksburg Car Department seniority roster.

In Award 1244, the board held, in effect, that an employe should not be allowed to be on the rosters in two different crafts at the same time. But there the Board had before it an interpretation of the rules of agreement mutually adopted by the parties and this interpretation was held controlling. Therefore, the Award is distinguishable on the facts of the case.

Here the Carrier contends that under the above quoted rule the Organization's protest of January 25, 1948, comes too late, because, by sufferance, the employe's name has appeared as a clerk on the proper seniority list from year to year with seniority date of as April 20, 1934. This view of the Carrier is not without some merit. Awards 1607 and 2515 lend weight to the argument.

In the last cited awards the Board held the protests came too late and the claims were barred. The force and effect of these awards are weakened, however, by rule differences. In Award 2515 there was added to the rule similar to the one here in question, a paragraph reading:

"Note:—Changes will not be made in seniority lists except upon protest filed within the 90-day period provided for in the rule and it is understood that this 90-day period applies only to the 90-day period next succeeding the issue of roster on which any change has taken place which justifies the filing of protest against the seniority standing of any employes shown on the list—except that purely typographical errors which might occur in transcribing the seniority from one roster to another will be corrected."

In Award 1607 the Board found significant the language, reading:

"If no such protest is taken within the sixty (60) day period, future appeals shall not be recognized, unless the employe's seniority date or relative standing on the roster is changed from that first correctly posted."

The above and foregoing language under the two agreements appears to expressly cut off any future protest against a seniority roster where no

change had taken place in seniority date, or relative standing of an employe on the roster, from the time of last posting to the date of the protested posting. A rule more comparable to the one here under consideration had been in effect earlier between the parties to Award 1607, and, in connection therewith, the Board observed that "correction could be made in the roster posted each January upon protest filed within 60 days." Accordingly, we interpret and construe the rules here in question to mean that 30 days from the date of any current posting is allowed for protesting the correctness of the seniority date of any employe on the roster and failure to do so attests to the correctness of dates until the next annual posting. The rules expressly states that each annual posting is "subject to claim for correction by any employes interested" and then goes on to limit the time for exercising the right to make claim for a correction in the roster for that year. Therefore, we hold the protest timely filed to accomplish a correction in the 1948 posting.

Attention is next called by the Carrier to Rule 21 and the "Rule 21—Memorandum of Agreement" which it contends are controlling. The Organization charges that the Carrier thereby seeks to inject new matter into the controversy after the case reached the Board, when all material should first have been considered on the property, and on such grounds objects to it being entertained here. We find some evidence in the record of the same rule and related memorandum having been discussed in the course of progressing the dispute to the Board, and, therefore, we do not believe the objection well taken.

However, we are unable to find that either Rule 21, or the memorandum agreement in connection therewith, sustains the Carrier's position. A review of the memorandum agreement found at another place in this record, as is the history of its development, shows that it was adopted subsequent to and in lieu of a letter agreement dated January 12, 1939, which in turn stipulated that no exception would be made to the application of Rule 21 back of January 1, 1939. As of the last mentioned date the employe whose seniority is in question was not under the Clerks' Agreement, but at the time, and for sometime prior thereto, he had occupied scheduled positions under the Car-men's Agreement. Further, it appears that the intent and purpose of such interpretations was to limit rather than to enlarge upon the exercise of seniority rights under Rule 21, subject nevertheless, to the proviso that earlier application of Rule 21 under previous interpretations, by which displacement rights had been exercised, should not be the subject of protest by the Organization. The employe in question, not being one of those occupying a position under the agreement by reason of displacement rights previously exercised, it is not clear how any additional rights have been conferred upon him by an undertaking that no exceptions will be taken to the application of Rule 21 and interpretations prior to January 1, 1943. It is argued, though, that under Rule 21 and the interpretation thereunto apropos prior to January 1, 1943, he is privileged to hold and accumulate seniority under the Clerks' Agreement so long as he is in an excepted position.

To whatever extent the argument is valid, there is nothing in the record, including the writings on which the Carrier relies, to indicate that an employe, transferring to a position under another agreement, and thereafter being promoted to an excepted or official position, could retain and accumulate seniority under the agreement from which originally transferred or transferring.

While true the employe was promoted to an excepted position prior to January 1, 1943, such position was not one of those recognized or contemplated by that part of Rule 1, appearing under the heading of "Exceptions" under the Clerks' Agreement. It hardly stands to reason that this, or any other organization, would permit an employe to retain and accumulate seniority under its agreement while in an excepted position under another agreement when the excepted position is not recognized by the first organization. To so hold is contrary to the principle that only the representative of a craft or class can speak for and make agreements applying to that craft or class. In

the situation before us it cannot be said that the parties to this dispute in making the agreement could have contemplated or had in mind so called excepted positions of other crafts or classes.

As heretofore indicated, seniority is something peculiar to the agreement of which it is a part. It controls the assignment of work to a given craft or class and confers right upon employees covered by the agreement only so long as they remain subject to its terms and conditions. True, the Organization can provide for the retention and even the accumulation of seniority by employees formerly under the agreement when transferring to a position without the agreement. However, the intent to do so is never inferred nor implied but must be found in the express language of the agreement.

It seems to be more or less traditional in railroad service not to allow an employee to carry seniority on the employees' roster of two different crafts at the same time, unless provided by agreement between the affected crafts and the Carrier, a situation which does not obtain with respect to the class of employees here involved. To uphold the Carrier's position in this case would permit the employee in question to enjoy seniority under both the Carmen's Agreement and the Clerks' Agreement, even in the absence of a mutual understanding between the Carrier and the Organization involved, and to the detriment of employees on assigned positions under the agreement who have a right to the full protection afforded them by their agreement.

The question here presented is wholly controlled by the provisions of the Clerks' Agreement. The named employee is presently in a service under the Carmen's Agreement and not within the Scope of the Clerks' Agreement. The provisions of the Clerks' Agreement are deemed controlling, and the seniority provisions thereof having no application to an employee in service under another agreement, the claim has merit and should be sustained.

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 Carrier violated the Agreement as contended by the Petitioner.

AWARD

Claim (1 and 2) sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 21st day of November, 1950.