

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Hubert Wyckoff, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

GULF, MOBILE AND OHIO RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they permitted Earl Yoakum, who has a seniority date as Flagman of January 15, 1948, to displace Flagman W. F. Steveson, who has a seniority date as Flagman of February 20, 1948;

(2) That W. F. Steveson be returned to his position as Crossing Flagman and paid for all time lost because of the Carrier's Improper action.

EMPLOYEES' STATEMENT OF FACTS: W. F. Steveson has a seniority date as Crossing Watchman as of February 20, 1943. Earl Yoakum has a seniority date as Crossing Watchman as of January 15, 1948.

Earl Yoakum entered the service of the Carrier on September 1, 1922, as a Locomotive Fireman and held seniority as such until he relinquished it on August 3, 1949.

When Earl Yoakum was first employed as a Crossing Watchman on January 15, 1948, he was an able bodied employe and is not at the present time incapacitated for service as a Locomotive Fireman.

Subsequent to the time Earl Yoakum established a seniority date as a Crossing Watchman, he has been employed by the Carrier in the capacity of a Locomotive Fireman. At the time Earl Yoakum displaced W. F. Steveson as Crossing Watchman, he was permitted to use the date he entered the service of the old Alton Railroad, a property which has now been acquired by the Gulf, Mobile & Ohio Railroad, as a seniority date in exercising displacement rights.

An interpretation of Article 23 of the effective agreement between Chief Engineer Chinn and former General Chairman W. N. Clay provides that able bodied watchmen will only displace other able bodied watchmen. Watchman W. F. Steveson, who was displaced by able bodied Watchman Earl Yoakum, has only one arm.

The agreement in effect between the two parties to this dispute, dated April 1, 1938, and subsequent amendments and interpretations, are by reference made a part of this Statement of Facts.

CARRIER'S STATEMENT OF FACTS: Earl Yoakum was employed as a road locomotive fireman on September 1, 1922.

This Board is without authority under rules of the Agreement and under the Railway Labor Act to deprive Earl Yoakum of his seniority date which requires the Carrier to use him ahead of Claimant.

The Carrier states, again, that if Earl Yoakum was not entitled to the position of crossing watchman (which he is by virtue of his seniority date of September 1, 1922), the Claimant could not safely be used, therefore he would not be used, in the tower, as operator of the controls which manipulate the crossing protection appurtenances affecting the several street crossings in Springfield, Illinois.

This claim has been handled in accordance with the provisions of the Railway Labor Act, as amended.

(Exhibits not reproduced.)

OPINION OF BOARD: This case involves the seniority rights of Crossing Watchmen under Article 23.

First. Article 23 does not abolish all considerations of seniority. It simply gives a preference, in filling and retaining positions, to "incapacitated employes from any department." The preference is to be given "when practicable" and, in determining the preference, the Carrier must take into account the degree of incapacity for other work, seniority in the service of the railroad and ability to perform the work. This preference in favor of incapacitated employes is the only circumstance in which deviation from the general rule of seniority is authorized by Article 23.

Neither the claimant nor Yoakum is entitled to any preference derived from Article 23, because Yoakum is able-bodied and because the claimant, having suffered his incapacity elsewhere than in the service of the Carrier, cannot qualify as an incapacitated employe from any department. And since he is able-bodied, Yoakum cannot use service in other departments to augment his seniority on the Crossing Watchman Roster.

It therefore follows that the claimant was senior to Yoakum.

Second. The Carrier contends that, since the 1949 and 1950 rosters both show a seniority date for Yoakum's service in other departments, failure to protest fixes that date as his seniority date as Crossing Watchman.

We do not think that Article 23 dispensed either with the necessity of maintaining a Crossing Watchman Roster or with procedural rules such as Article 11. In any event, since 1948 the Carrier has prepared and distributed such a roster and the Carrier is here invoking Article 11.

The manner in which the Carrier prepared these rosters did not reflect the preference to which the incapacitated Crossing Watchmen on it were entitled; and the entries of seniority dates comprising service in other departments listed opposite the names of able-bodied Crossing Watchmen were irrelevant and of no significance, as we construe Article 23. The most reasonable inference to be drawn from the form in which these two rosters were prepared is that the Carrier considered seniority in service as a Crossing Watchman to be controlling, subject only to deviation in cases when Article 23 came into play, in which event service in other departments would be relevant.

It follows that there was nothing for the claimant to protest on either of these rosters.

Third. The Carrier urges a practice claimed to be of long standing, of the exercise of seniority rights by able-bodied Crossing Watchmen based on service in other departments.

It is only where the Rule is ambiguous that past practice is relevant, and this Rule is not ambiguous.

Fourth. At the time the claimant was displaced, there was a change in the requirements of the position, as a consequence of which the Carrier considers that the claimant is not qualified to perform the new duties. There is evidence to support this conclusion.

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 has not been violated.

AWARD

Claim denied for the reasons stated in the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 7th day of February, 1951.