

Award No. 5520

Docket No. MW-5477

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY

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

(1) The Carrier violated the effective agreement when they changed the seniority date of Track Laborer D. E. Crews, Concord, Illinois, and allowed Mr. Crews to displace Section Laborer W. H. Nergenah;

(2) The seniority date of Track Laborer D. E. Crews be corrected to coincide with the dates shown during the period 1945 to 1949, inclusive;

(3) Track Laborer Nergenah be paid for all wages lost during the time he was displaced by Track Laborer D. E. Crews.

EMPLOYEES' STATEMENT OF FACTS: The Beardstown Division Section Laborer's seniority rosters for the years, 1945, 1946, 1947, 1948 and 1949, listed Laborer W. H. Nergenah, with a seniority date of June 12, 1944 and Laborer D. E. Crews, with a seniority date of July 24, 1944.

After the issuance of the 1949 seniority roster, the Carrier contended that the seniority date accredited to Laborer Crews, on the five previous rosters, was incorrect, and that his seniority date should be listed as April 24, 1944. The Carrier then recognized the April 24, 1944 date, as the correct seniority date for Laborer Crews, and permitted him to displace Laborer Nergenah.

This displacement resulted in the furlough of Nergenah, who suffered a wage loss because of the change in seniority dates.

The Employees filed claim in favor of Section Laborer Nergenah, for all wages lost due to the mishandling of seniority, and claim was declined.

The agreement between the two parties to this dispute dated December 1, 1946 and subsequent amendments and interpretations are by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: As stated in the Employees' Statement of Facts, seniority rosters for the years 1945 through 1949, listed Section

OPINION OF BOARD: Basically, seniority rights are contractual rights so the extent thereof and the limitations thereon are determined by the contractual provisions governing them. Rule 4 is entitled "Seniority Date". Paragraph (a) thereof provides:

"Except as otherwise provided for in this rule, the seniority date of an employe in any group and grade thereof shall be the first day of compensated service, subject to the terms of Rule 3."

(Rule 3 relates to a 60 day probationary period and is not applicable here.)

Paragraph (e) thereof provides in part:

"The date of an employe on the seniority roster shall determine his relative seniority status, * * *."

Since the provisions of Paragraph (a) are subject to the other provisions of the rule, it is clear that the seniority roster date is determinative of an employe's seniority status in relationship to other employes. This claim involves the relative seniority status of two employes.

Rule 7 is entitled "Seniority Rosters". Paragraphs (a) and (b) provide for the compilation of such rosters and the information to be shown thereon. Paragraph (c) provides:

"Seniority rosters will be revised and posted in May each year, and will be open for correction for a period of sixty (60) days from date of posting. Protest on seniority dates for corrections will be confined to names added since posting of previous annual rosters, except to correct omissions and typographical errors."

In this case the seniority roster date of an employe was changed in 1950 by the Carrier on the basis that a typographical error had been made in preparing the 1945 roster on which his name first appeared and that subsequent rosters continued the error because they were copied from the preceding one.

The stabilization of relative seniority status is of the utmost importance both to the employes and to the Carrier. This rule is obviously intended to achieve that result. It gives to an employe the right to check and correct his date within 60 days after his name first appears thereon and thrusts upon him the responsibility of doing it then or forever after holding his peace, by limiting protests to those names added since the last posting. However, it excepts from that limitation the correction of omissions and typographical errors.

An omission would consist of leaving off the new list a name which was on the prior list and a typographical error would be a misspelling or mistake in copying from the prior list. To hold that such exception contemplates the correction in 1950 of an error in a seniority date made in 1945 upon the claim that a stenographer made a typographical error in copying the same from the employment application, would pervert the whole purpose and intent of the rule. Moreover, we do not think that a change based upon information contained in other records can be properly termed a correction of a typographical error.

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

The Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1951.