

Award No. 5712
Docket No. CLX-5659

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Angus Munro, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES

RAILWAY EXPRESS AGENCY, INC.

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

(a) The agreement governing hours of service and working conditions between the Railway Express Agency and the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes, effective October 1, 1940 and the Memorandum of Understanding August 6, 1942 were violated through failure to permit G. R. Beal, Jr. to exercise displacement over a junior employe on the Montana Division train service seniority roster and establish a seniority date thereon;

(b) He shall now be permitted to do so and given a seniority date of January 13, 1943 and rank next above the name of D. H. Graham; and

(c) He shall be compensated for monetary losses sustained retroactive to and including July 16, 1949.

EMPLOYEES' STATEMENT OF FACTS: G. R. Beal, Jr. has a seniority date on the Spokane, Washington Agency roster of April 11, 1941 and on the Washington, Alaska, Yukon Division Train Service Roster of August 11, 1941. At the time of entering military service, October 2, 1945, he occupied a train service position in the latter seniority district. He was discharged from military service October 2, and resumed work as a train service employe in the W. A. Y. Division December 4, 1945.

June 6, 1946 Beal sought to exercise displacement over some junior employe in the Montana Train Service Seniority District who had acquired a seniority date on that roster while he was in military service. It was determined that a position in this seniority district was awarded to a new employe, D. H. Graham, June 13, 1943. This request was declined by Superintendent W. G. Watkins on the ground that such was beyond the scope of the Memorandum of Understanding of August 6, 1942.

On appeal to General Manager F. J. Glover the request was denied on the ground that since it did not appear there had been any junior employe to Beal on the Spokane Agency Roster who had secured a seniority date on the Montana Division Roster while Beal was in military service, he therefore had no right to establish a date thereon. In confirmation of this statement we quote from his letter to General Chairman T. E. Hinton, December 31, 1946, in part

a junior employe six weeks later, is wholly determinative of the issue in the instant case. Messenger Beal exercised his election to return to his former position on December 4, 1945, and not six weeks but six months later sought to establish seniority in another and separate seniority district in the manner set forth in Carrier's Statement of Facts, first naming Gronenthal and later naming Graham, all subject to "ifs". "If" Johanson, senior to Beal, is accorded Gronenthal's seniority date, and "if" Bereiter, senior to Beal, is accorded Brook's seniority date, then Beal will have to be satisfied with Graham's seniority date. The entire claim is not only wholly irregular and based on prospects in other cases, but clearly unsupported by any rule of the Agreement between the parties effective October 1, 1940, and the Memorandum of Understanding of August 6, 1942, and should be denied in its entirety.

All evidence and data have been considered by the parties.

(Exhibits not reproduced).

OPINION OF BOARD: This case is similar to the situation and principle involved in Docket No. CLX-5656, Award 5711. Under the authority thereof an affirmative award is not warranted.

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

That the evidence of record does not warrant an affirmative finding.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Acting Secretary

Dated at Chicago, Illinois, this 4th day of April, 1952.