

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John W. Yeager, 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 Employees, effective October 1, 1940 was violated on the Maryland-Pennsylvania Division when management arbitrarily added the name of employe P. E. Myers on the 1950 Consolidated Messenger Roster; and

(b) Employe Samuel Geissinger, whom that action affected, shall be paid for all runs covered by train employe P. E. Myers from January 15, 1951 until the violation is corrected.

EMPLOYEES' STATEMENT OF FACTS: Train service employe P. E. Myers entered the service of Railway Express Agency January 8, 1945 and was awarded a bulletined position June 29, 1946. His name did not appear on the Consolidated Seniority Roster for either 1947 or 1948 and Myers did not protest the omission of his name from either of these rosters. However, when his name did not appear on the 1949 Consolidated Seniority Roster, Myers did protest its omission and the Carrier issued Supplement No. 2 to the 1949 Consolidated Seniority Roster showing him as entering the service on January 8, 1945 with a seniority date of June 29, 1946. (Exhibit A.)

Employe S. W. Geissinger entered the service on July 24, 1946 and was awarded a bulletined position March 15, 1947. His name properly appeared on the 1947 and 1948 Consolidated Seniority Rosters with correct seniority date; which date is not in dispute.

A dispute arose as to which of the two, Myers or Geissinger, was entitled to a vacancy and when it was finally awarded to Myers, Geissinger, upon investigation discovered that the carrier had, arbitrarily added Myers' name to the Consolidated Seniority Roster of 1949, by Supplement No. 2, and in giving him a seniority date of June 29, 1946 had violated the provisions of Rule 20 of the Agreement of October 1, 1940, as well as an interpretation of said rule adopted by the Express Board of Adjustment No. 1 on March 24, 1930. Rule 20 of the Agreement and the Resolution referred to are set out in the "Position of Employees."

29, 1946, was uncontested within sixty days; it was not changed on the January 1, 1950, roster and is not subject to change.

The rules have been strictly complied with and the claim is wholly unsupported. As a matter of fact in General Chairman McGarrigle's letter of February 6, 1951, to Superintendent Germond initiating the claim, Mr. McGarrigle in no uncertain language supports the position of the Carrier by asserting that it is permissible to show Myers on the 1950 roster as of June 29, 1946, and further asserts that Myers can be shown on the roster as of the date when he was placed on the first Messenger position in the district. Mr. McGarrigle then perhaps unknowingly exhibits an unfamiliarity with the facts by asserting that he understands that Myers was first placed on a Messenger position sometime in 1949. That understanding of course is incorrect. Myers entered the district in question June 29, 1946, and inasmuch as Mr. McGarrigle agrees that it is proper to show Myers on the 1950 roster as of the date he was placed on the first Messenger position upon entering the district, June 29, 1946, the case falls of his own admissions. Mr. McGarrigle's confusion with respect to the date Myers entered service is apparent from the record showing that he entered the service January 8, 1945, whereas Geissinger entered the service on July 24, 1946. Not only has Myers greater service, but greater seniority in Messenger Service, having been awarded a position in Messenger Service June 29, 1946, whereas Geissinger was not awarded a position in Messenger Service until March 15, 1947.

In Decision E-1525 of Express Board of Adjustment No. 1, Referee Grady Lewis said:

"There is but one proper way for an individual to have his name projected upon a seniority roster. That way is provided by Rule 3 of the Agreement. It requires that an employe be awarded a position within a designated seniority district, by bulletin and assignment.

The seniority thus acquired is a valuable property right, and is so regarded by every jurisdiction in the United States. It is a right that is zealously guarded by every trade union and every trade union member known to business and industry.

It is not a right that is subject to the vagaries of a scrivener, either by the adding of a name to a roster or by the omission of a name from a roster.

Individuals' names are entitled to be placed upon rosters because they have seniority, not to give them seniority."

In item (b) claim is asserted in behalf of Geissinger that he shall be paid for all runs covered by Myers from January 15, 1951, until the violation is corrected. There is no showing of any violation, nor of any loss suffered by Geissinger. The claim is wholly without merit and should be denied.

All evidence and data set forth have been considered by the parties in correspondence and conference.

(Exhibits not reproduced.)

OPINION OF BOARD: There is no factual dispute involved here. P. E. Myers has seniority dating from June 29, 1946. Samuel Geissinger in whose behalf the claim is made has seniority dating from March 15, 1947. Thus in seniority Geissinger is junior to Myers.

Myers' name was erroneously omitted from the roster required under the rules to be posted in January of each year. Presumably no application was made for correction. The names of both Myers and Geissinger were omitted from the January, 1948 roster. Presumably no application was made for correction by either. Geissinger's name did appear on the January, 1949 roster but that of Myers' was left off. Within 60 days Myers called attention to the omission whereupon his name was added and he was

accorded his proper seniority date. On the January, 1950 roster the names of the two appeared but Myers was not given his proper rank. On his complaint made within 60 days his proper rank was assigned. It is assumed that on the January, 1951 roster the two appeared with proper rank.

A position was bulletined January 3, 1951 for which Myers and Geissinger bid. Geissinger was notified of appointment but this was rescinded and Myers was appointed on the ground that he was the senior of the two.

The Organization substantially contends that these errors by the Carrier in the posting of rosters had the effect of, in the instance, making Geissinger senior to Myers thus entitling him to the appointment.

The Rule which is decisive of this controversy is Rule 20 and particularly the second paragraph thereof as follows:

"The roster will be revised and posted in January of each year and will be open for a period of sixty (60) days from date of posting to protest as to additions or changes that may have been made since posting of previous year's roster. Upon presentation of proof of error occurring in the record of the preceding year by an employe or his representative, such error will be corrected. The duly accredited representative of the employes shall be furnished with a copy of the roster."

In 1950 in strict conformity with the Rule when Myers discovered the admitted error he complained and again in strict conformity with the Rule the error was corrected.

Under the language and the evident purpose of this Rule it was obviously intended that all ratings to which there was no protest should be and became fixed for the year after 60 days, and that all ratings protested within 60 days should become fixed for the year after disposition of the protest. It contains no language the effect of which is to say that an error in a seniority roster made in and binding for one year confers any right to have the error carrier forward into the next or succeeding year or succeeding years. Of course it must have been intended that the protested ratings should be properly integrated into the roster after disposition of the protest.

Myers received the appointment in accordance with his seniority as it appeared at the time. He was accordingly entitled to it.

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 claim has not been sustained.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 30th day of June, 1952.