

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Paul G. Jasper, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

MAINE CENTRAL RAILROAD COMPANY

PORTLAND TERMINAL COMPANY

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

(1) The Carrier erred when they permitted Trackman Murray Hall to displace Trackman Maurice T. Jordan on the South Gardiner Section for a seven-day period, April 13, 1950 through April 21, 1950, both dates inclusive;

(2) Trackman Maurice T. Jordan be paid at his respective rate of pay for all earnings lost during the period referred to in part (1) of this claim.

EMPLOYES' STATEMENT OF FACTS: Mr. Maurice T. Jordan entered the Carrier's service as a Trackman on April 29, 1948 and remained in the Carrier's service as a Trackman until October 8, 1948 when he was furloughed as a result of force reduction. Mr. Jordan properly filed his name and address in accordance with the provisions of Rule 6(a).

Mr. Murray Hall entered the Carrier's service as a Trackman on July 26, 1948 almost three months later than the date on which the claimant was employed.

The Carrier permitted Trackman Hall to displace Trackman Jordan at the close of the working day, April 12, 1950, whereupon Trackman Jordan formally filed a protest over being displaced by a junior employee. The protest was not allowed by the Carrier's Track Supervisor, Mr. W. M. Martin. The grievance was subsequently referred to the Employees' representative for further handling, who filed a formal claim in behalf of Trackman Jordan for all wage loss suffered on account of improper displacement.

Trackman Jordan was recalled to active service with the Carrier on April 24, 1950, having lost seven (7) working days employment or \$71.12 in wages.

The claim was appealed in accordance with the provisions of the effective agreement but the Carrier declined to allow the claim.

railroad six (6) months within the preceding twenty-four (24) month period.

4. That the Employees are in error when they attempt to interpret the provisions of Rule 2 as modified by the provisions of the Supplementary Agreement of November 4, 1943, in any different light.

and respectfully requests that this claim be DENIED.

All data submitted incident to this claim, as outlined in this submission, has been presented to the Employees and made a part of the particular question.

(Exhibits not reproduced.)

OPINION OF BOARD: Murray A. Hall was permitted to displace the claimant, Maurice T. Jordan, on April 13, 1950 when a reduction of force was effective.

The Claimant entered the Carrier's service as a trackman April 20, 1948; because of being furloughed Jordan completed six months' service April 19, 1949.

Murray A. Hall entered the Carrier's service as a trackman July 26, 1948; because of being furloughed Hall completed six months' service on April 17, 1949.

Jordan claims seven days' pay or \$71.12 in wages for being wrongfully displaced by Hall.

The issue to be decided is whether or not an employee's seniority will begin as of the date his pay started, provided he served his required probationary period, or whether his seniority starts as of the first day following the completion of the probationary period.

Article 1, Rule 1, the Scope Rule, provides:

"These rules shall govern the hours of service and working conditions of all employees, except emergency and temporary employees, in the Maintenance of Way Department as hereinafter named. * * *

Track Department

* * * *

Labors (Trackmen after six months)

Track repairmen

* * * *

Any new designations under above classifications shall be subject to agreement between the Management and the General Chairman in both Track and Bridge and Building Departments." Rule 2 provides:

"RULE 2. (a) Seniority of an employee within the scope of this agreement begins at the time an employee's pay starts in the class in which employed, except that laborers have no seniority rating, nor will seniority rights apply, until they have been in the service of the railroad six (6) months within the preceding twenty-four (24) months' period; also except that seniority rights of employees other than laborers shall not apply until after they have been in the service more than thirty (30) calendar days.

(b) Seniority of employees promoted to bulletined positions will date from the date they are awarded bulletined position. The assignment of an employee to fill a temporary vacancy not subject to bulletin, or prior to a bulletin award, does not establish a seniority date.

(c) An employe qualifying for and accepting a promotion shall retain his seniority rights in the class from which promoted.

(d) The dating of an employe on the seniority roster shall determine his relative seniority status. When two or more employes have the same seniority dating, the numerical position on the roster will govern. In arranging the numerical standing of such employes who have the same seniority date, alphabetical order shall determine."

Rule 13 provides:

"RULE 13. (a) Seniority rosters of employes of each sub-department by seniority districts, as shown under Rule 4, shall be separately compiled. Copies will be furnished foremen and employes' representatives. Foreman will post rosters at headquarters in convenient places for inspection by employes affected. Trackmen and laborers will not be on roster until after six months' service within the preceding twenty-four (24) months' period.

(b) Seniority rosters will show the name, date entered service, seniority date in each classification, and date of promotion. Rosters will be revised and posted in January of each year and will be open to correction for a period of ninety (90) calendar days from the date of posting. Upon presentation of proof of error, such error will be corrected. If no protest is presented within ninety (90) calendar days, the dates will stand, and thereafter will not be subject to protest on any future roster, except that any typographical errors will be corrected at any time."

On November 4, 1943, in compliance with Rule 1 a supplementary agreement was entered into as follows:

"It is agreed and understood that Laborers, Section and Extra Crew will be classified as Trackmen and receive the Trackman's rate per hour, and time and one-half after 8 hours effective at once."

This supplementary agreement arose out of fact that the Carrier was having trouble during the war years to get laborers to work at the rate set and proposed the change as a solution to the problem.

Prior to the November 4, 1943 Supplementary Agreement there can be no question that a man employed as a track laborer would start accumulating his seniority the day after he had completed six months' service out of the preceding 24 months. This was the practice and interpretation of the similar agreements since July of 1913.

Did the Supplementary Agreement change the former agreement so that seniority reverts to a man's first day of pay after he had served the probationary period?

The Supplementary Agreement is unambiguous in that laborers, section and extra crew will be classified as trackmen as of November 4, 1943. We cannot add words to nor take words out of the Supplementary Agreement.

Rule 2 (a) is unambiguous in its first exception. It excepts only laborers and requires only those classified as laborers before having seniority rights and rating to be in service six months in the preceding 24 months. The second exception in Rule 2 (a) is unambiguous in that seniority rights of employes other than laborers (our underlining) shall not apply until they have been in service 30 calendar days.

We cannot add words to this rule by interpretation. The Carrier asks us to add the words in the exceptions, "and trackmen". This is a matter for negotiation under Rule 1.

If it was the intention of the Carrier to require trackmen to have six months' service in the preceding twenty-four months before seniority rights and rating shall commence, they should have negotiated the change in the Rule 2 (a).

We must next consider that part of Rule 13 (a) which provides, "Trackmen and laborers will not be on roster until after six months' service within the preceding twenty-four (24) months' period.

This portion of the rule specifically and unambiguously keeps off the roster both trackmen and laborers who do not have the necessary service performed.

Rule 2 is a special rule covering seniority and provides how and when seniority rights will be acquired. This rule is not modified in any manner by Rule 13 (a). Rule 13 (a) does keep off the roster posted all laborers and trackmen who do not have in the necessary service, however, Rule 13 (a) does not change the time when seniority rights and rating will commence. Under Rule 13 (a) once a trackman has six months' service performed in the preceding twenty-four months, then he must be placed on the roster with seniority dating from the date his pay started.

The two men involved in this claim were employed as trackmen. Rule 2 (a) in speaking of "laborers" means those classified as laborers under the Agreement. The classification of "laborer" no longer existed as far as the Track Department was concerned after the Supplementary Agreement of November 4, 1943 was in effect. The Carrier could not under Rule 2 (a) keep trackmen from accumulating seniority from the date their pay started and after they had served thirty calendar days.

The Carrier contends that Rule 13 (b) applies to the Claimant and he is barred from protesting his seniority since he didn't protest the 1949 Roster within 90 days; to this we cannot agree. Both Jordan and Hall did not have six months' service within the preceding twenty-four months until in April 1949, therefore, they could and would appear for the first time on the posted roster of 1950. There is no contention that the error complained of here was not called to the attention of the Carrier within the ninety days after the posting of the 1950 roster; therefore, we must assume that this claim was properly presented.

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 was violated.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

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

Dated at Chicago, Illinois, this 28th day of July, 1952.