

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Dudley E. Whiting, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

**MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
MISSOURI-KANSAS-TEXAS RAILROAD COMPANY
OF TEXAS**

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

(1) The Carrier violated the effective agreement when it failed to bulletin and assign two Bridge and Building Mechanics' positions and two Bridge and Building Helpers' positions created during June, 1951, in accordance with the provisions of Article 5, Rules 1 and 2;

(2) Because of the violation referred to in part (1) of this claim, Roy Nichols and W. W. Moore shall each be awarded a seniority date as Bridge and Building Mechanic as of the date the two Bridge and Building Mechanics' positions were created in June, 1951.

(3) Roy Nichols and W. W. Moore be allowed the difference between what they were paid at the Bridge and Building Helpers' rate of pay and what they would have received at the Bridge and Building Mechanics' rate of pay if they had been permitted to fill the positions of Bridge and Building Mechanics which were created in June, 1951.

EMPLOYEES' STATEMENT OF FACTS: During June, 1951, the Carrier maintained three Bridge and Building gangs on the seniority district comprising its Southern Division. One such gang was in charge of Foreman Guy F. Choate.

On or about June 1, 1951, two new Bridge and Building Mechanics' positions and two new Bridge and Building Helpers' positions were created in Foreman Choate's gang.

Two Bridge and Building Helpers employed in Foreman Choate's gang were promoted to Bridge and Building Mechanics. Senior Bridge and Building Helpers Roy Nichols and W. W. Moore, who were employed in another Bridge and Building gang, were deprived of an opportunity for promotion to Bridge and Building Mechanics.

junior B&B Helpers or hired, without protest, five subsequent to June 1, 1951, as follows:

Name	Seniority Date	
	Mechanic	Helper
Cesar, D. F.	10-27-50	
McBride, C. R.	7- 2-51	10- 9-50
Van Dusen, H. E.	12- 3-51	3-19-51
Cowden, J. H.	7-31-53	
Garton, H.	8- 6-53	10- 5-51
Gideon, F. T.	8- 6-53	

It is therefore evident both Nichols and Moore have consistently waived their rights to promotion from B&B Helper as they are privileged to do under Rule 7, Article 5, reading:

"Employees declining promotion shall not lose their seniority except to the employees promoted and only in the next higher rank of service."

and they have not been denied such rights as alleged but not affirmatively shown by the Petitioner.

As the facts and evidence conclusively show that the Board is without jurisdiction, the claim is barred by the time limitation rule, and there is no basis in fact for any claim, the Board is requested to dismiss or deny this claim.

Except as expressly admitted herein, the Carrier denies each and every, all and singular, the allegations of the Petitioner's claim, original submission and any and all subsequent pleadings.

All data submitted in support of Carrier's position as herein set forth have been heretofore submitted to the employees or their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: It is undisputed that two new Bridge and Building Mechanic positions were created on June 1, 1951 and not bulletined within five days so part (1) of the claim must be sustained.

To award seniority dates in that job classification to specified employees it must appear that they would have been entitled to the positions by virtue of their seniority and ability under the Agreement. To hold otherwise would do injury to the seniority rights of other employees.

C. C. Adair, who was assigned to one of the positions, had the greatest seniority as a B. and B. Helper and also held seniority from October 2, 1945 as a B. and B. Mechanic. Neither of the named claimants had any seniority as a mechanic so Adair's right under the Agreement to one of the positions is unimpeachable by these claimants.

R. E. Willis was assigned to the other position. His seniority as a Helper is greater than Moore's but less than Nichols'. However Nichols had been disqualified as a mechanic and has waived promotion to such position at each subsequent opportunity both before and after June 1, 1951. Hence it appears that Willis had a superior right to such position under the Agreement, than either of the claimants. Thus part (2) of the claim must be denied.

Part (3) of the claim is clearly barred by the provisions of Article 24, Rule 2, which reads as follows:

"Claims of employees which may arise under this agreement shall not be subject to monetary recovery unless presented within sixty days from the date of events or circumstances on which the claim is based."

We have no right to alter that rule nor to disregard it even though the Carrier is found to have violated the Agreement.

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 Employee involved in this dispute are respectively Carrier and Employee 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 Agreement was violated.

AWARD

Claim (1) sustained. Claims (2) and (3) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of August, 1955.