

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Benjamin H. Wolf, Referee

PARTIES TO DISPUTE:

JOINT COUNCIL DINING CAR EMPLOYES, LOCAL 849

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of Joint Council Dining Car Employees Local 849 on the property of the Chicago, Rock Island & Pacific Railroad Company, for and on behalf of Lounge Car Porter Henry Walton, who was replaced on his regular assignment by Hasten Terrell, a Junior employe, that:

1. Carrier be ordered to correct its 1960 Lounge Car Porter's seniority roster so as to show claimant's seniority date as the same date that appeared on Carrier's 1947 Lounge Car Porter's seniority roster.
2. Claimant be returned to his regular assignment, and
3. Claimant be compensated for his net loss in wages since the date he was replaced on his regular assignment.

EMPLOYEES' STATEMENT OF FACTS: On September 6, 1960, Employees filed the following claim:

"September 6, 1960

"Mr. M. V. Dolan
Superintendent, Dining Car Employes
Chicago, Rock Island & Pacific Railroad Co.
164 West 51st Street
Chicago, Illinois

"Dear Sir:

"Accept this as a time and money claim in behalf of Henry Walton, club car porter, who was removed from his regular assignment by the commissary agent; a junior employe, Mr. Hasten Terrell, was allowed to replace him. Mr. Walton is a senior employe in this classification and should not have been disturbed by Mr. Terrell.

"We request that Mr. Walton be paid all time lost, as well as,

graphical errors seniority dates not protested within thirty (30) days following time of posting of bulletin shall be considered as permanently established."

Having made no timely protest the 1960 seniority dates applicable to the claimant involved, the 1960 seniority roster must control the present dispute. Particular reference is made to the emphasized portion of the above quoted rule.

In discussing the case on the property, the Organization made no contention that the 1960 seniority roster was prepared and issued other than in the timely manner prescribed by Rule 9(f). Carrier's records show that the controlling roster was sent to General Chairman C. L. Patrick on March 4, 1960. At no time did Mr. Patrick allege failure to receive a copy of the roster for his inspection. At no time did General Chairman Patrick protest the accuracy and validity of the seniority date of the employee involved after his receipt of the 1960 roster.

Rule 9(f) was written into the Agreement to provide for prompt and orderly correction of possible errors if any in the annual seniority rosters. To now sustain the claim of Mr. Walton would be to write Rule 9(f) out of the Agreement.

No protest of claimant's seniority date on the 1960 roster having been received within the 30-day time limit imposed by Rule 9(f), the Carrier is powerless to make any changes at any future date.

For the above reasons, claim in behalf of claimant Walton must be denied in its entirety and Carrier respectfully requests your Board to do so.

OPINION OF BOARD: This is a dispute over the relative seniority of two lounge car porters. Every January since 1948, the Carrier has regularly posted seniority rosters on which the Claimant, Henry Walton, has appeared as junior to Hasten Terrell. Walton made no protest of his position on the roster until September 6, 1960, shortly after he was replaced in his assignment by Terrell.

Rule 9, paragraph (f) of the applicable Agreement, reads as follows:

"A seniority roster of all employes in each classification who have been in the service six (6) months or more, showing names and dates of entering service or class, will be posted for inspection of employes interested, and copy furnished the local chairman. The seniority roster will be revised and posted in January of each year and shall be open for correction for a period of thirty (30) days from date of posting, such corrections to be made on presentation of proof of error by employe or his representative. Except to correct typographical errors seniority dates not protested within thirty (30) days following time of posting of bulletin shall be considered as permanently established."

Rule 9, paragraph (f) bars any protest more than 30 days after the roster has been published and would seem, therefore, to bar this claim. The Petitioner, however, asserts that the 1947 roster placed Walton's name senior to Terrell's. It argued that Walton was thereby permanently established as senior to Terrell and that the Carrier had no right, thereafter, to change their

relative positions. It urged that all subsequent rosters be deemed to have had no effect in changing their standings.

The rule, it may be noted, provides that the list will be revised each year and that, if not protested in 30 days, it shall be deemed permanent. This surface contradiction, providing for flexibility and rigidity at one and the same time, can be resolved and harmonized if we bear in mind the objectives of the parties. The seniority roster is compiled to have an unimpeachable source of authority upon which to base decisions in which seniority may be involved. This authority must be established in advance if quarreling and bickering over relative standing is to be avoided at the time it is called into use. The parties had two major concerns in the establishment of the roster. First, there had to be recognition that the composition of any work force varies from time to time as old employees drop out or transfer to other jobs and as new employees are added. Management must make periodic revisions if the list is to reflect these inevitable changes. The parties must also have foreseen that in making revisions there would always be the possibility of error. This possibility was their second concern. It was solved by giving the employees a limited time in which to call attention to an error and have it corrected. Thus, the needs of Management to revise and the employees to correct having been provided for, and both having been exercised, the list was then to become permanent.

The permanency contemplated by the parties could not mean that Management might not thereafter revise it, for this would be a direct contradiction of the provision calling for yearly revision. It was to be, however, permanent in other respects, and it precludes the right of an employee to enter a protest once the initial time limit of 30 days has elapsed.

Thirty days after it has been established, lacking a protest, the seniority roster becomes permanent and unchallengeable in the future, except that Management may revise it in January of each year. Thereafter, employees may challenge the list only insofar as the revision constitutes a change from the year before and this challenge must be made within the allotted 30 days by the employees aggrieved or the right to do so is forever lost. The argument of the Petitioner that the 1947 list having once been constituted, could not thereafter be revised is, therefore, rejected as not in accord with the intention that the parties expressed in the Rule.

The Petitioner relies on the authority of Award 8709. That case is clearly distinguishable from the case at bar. There, the seniority list was established by mutual agreement between Carrier and Organization who had the problem of merging two seniority lists when two positions were consolidated into one. The list was upheld not because it was once established and therefore inviolable by the Carrier but because it was jointly and mutually agreed upon. There, as in this case, the Claimant waited a long time, 15 years in that case and 12 years in this. We agree with the opinion of the Board that good conscience should not upset a long established list where the Claimant "sat supinely by, while the rights and obligations of the Carrier, Organization and employees listed on the roster crystallized."

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are re-

spectively 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

That the applicable Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 28th day of February, 1964.