

Award No. 13844

Docket No. MW-14937

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

John H. Dorsey, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES

CENTRAL OF GEORGIA RAILWAY COMPANY

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

(1) The Carrier violated the Agreement when it allowed System Machine Operator W. E. Hubbard to displace System Machine Operator J. M. Pike on T&S Gang, effective December 21, 1962. (System Case No. 36-23-113, Docket MW-9976 — File MW 3102.)

(2) System Machine Operator J. M. Pike be allowed pay at the System Machine Operator's rate for all time worked by W. E. Hubbard on the position from which Claimant Pike was improperly displaced effective as of December 21, 1962.

EMPLOYEES' STATEMENT OF FACTS: The claimant was employed as a regularly assigned system machine operator in the T&S Gang and obtained his position by bidding on same when it was bulletined. He has established and holds seniority rights as a system machine operator in sub-department H-2 as of January 4, 1962.

On December 21, 1962, the claimant was displaced from his position in the T&S Gang by System Machine Operator W. E. Hubbard who holds seniority rights in sub-department H-2 as of January 4, 1962.

Claim was timely and properly presented and handled at all stages of appeal up to and including the Carrier's highest appellate officer.

The Agreement in effect between the two parties to this dispute dated September 1, 1949, together with supplements, amendments and interpretations thereto, is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYEES: The claimant has established and holds seniority rights in sub-departments H-1 and H-2 in accordance with the provisions of Rules 3(a) and (b), which read:

Third Division AWARD 6402 (Referee McMahon)

"It is therefore the opinion of the Board that no conclusive evidence has been produced to show any violation of the Agreement as alleged. We again reiterate as we have said many times before, the burden of proof is upon the party making the claim, and where competent proof is lacking a sustaining award is improper. * * *

AWARD

Claim denied."

Third Division AWARD 6379 (Referee Kelliher)

"The Petitioner has failed to sustain its burden of proof to show a contract violation.

AWARD

Claim denied."

Third Division AWARD 6378 (Referee Kelliher)

"Based upon an analysis of all of the evidence, it must be found that the petitioners have failed to sustain the burden of proof and, therefore, claim is accordingly denied.

AWARD

Claim denied."

Third Division AWARD 5418 (Referee Parker)

"* * * Under our decisions (see e.g. Award No. 4011) the burden of establishing facts sufficient to require or permit the allowance of a claim is upon him who seeks its allowance and, where that burden is not met, a denial Award is required for failure of proof.

AWARD

Claim denied."

Also see numerous other awards, including Third Division Awards Nos. 8172, 7964, 7908, 7861, 7584, 7226, 7200, 7199, 6964, 6885, 6844, 6824, 6748, 6225, 5941, 2676, and others. Also see Second Division Awards Nos. 2938, 2580, 2569, 2545, 2544, 2042, 1996, and others — all of which clearly state that the burden is on the claimant party to prove an alleged violation of the agreement. To date, the Brotherhood has produced no evidence of any violation.

(Exhibits not reproduced.)

OPINION OF BOARD: The Agreement is silent as to the order in which employees, having the same seniority date, will rank.

In those instances where two or more employees had the same seniority date, Carrier, historically, has placed their names on the appropriate seniority list in alphabetical order and they were ranked, seniority-wise, accordingly.

Employees G. H. Haynes, W. E. Hubbard and J. M. Pike (Claimant) were each promoted to positions of System Machine Operators in Sub-department H-2 on January 4, 1962. On the seniority roster posted on July 1, 1962, they were shown to have the same seniority date, their names appeared in alphabetical order and they were ranked in that order — Haynes (47), Hubbard (48) and Claimant Pike (49).

On December 21, 1962, Claimant was displaced by Hubbard. The Claim is that since Hubbard and Pike had the same seniority date, Claimant was not junior to Hubbard and, therefore, Hubbard had no contractual right to displace Claimant.

The Organization has advanced a number of arguments addressed to what it considers would be a more equitable way than alphabetical listing to vest seniority ranking. While the arguments may have merit in equity they find no support in the Agreement. Were we, by award, to endorse such proposals we would write into the Agreement a new rule — an action which all will agree is beyond the powers of the Board.

Looking to the Agreement we find the following to be pertinent:

"RULE 4. SENIORITY ROSTER

(b) Subject to Paragraph (c) of this Rule, the Seniority Roster will be revised and posted in January and July of each year and will be open for protest for a period of sixty (60) days from the date of posting and upon presentation of proof of error by an employee or his representative such error will be corrected. Copies of the Seniority Roster will be furnished Foreman, General Chairman and Local Chairman and will be posted at convenient places available for inspection by employees interested.

(c) Effective with the Roster dated July 1, 1960 any date which shall have remained unchanged on two (2) successive Rosters shall not be open to any question thereafter." . . .

"RULE 7.

REDUCTION AND/OR INCREASE OF FORCE

(a) When gangs or positions are abolished, or gangs or positions are consolidated, written notice will be given which will be effective three (3) days after notice is issued. In reducing forces, seniority shall govern. Employees affected may displace employees their junior in any class in which they hold seniority." . . .

Recognizing that stabilization of employee seniority is of the utmost importance both to the employees and to the Carrier, it is evident that, in the absence of prescription in the Agreement, some method had to be employed to rank employees having the same seniority date. Under the Rules of the Agreement, if the Organization or an employee is of the opinion that the method employed is destructive of seniority rights, the time to raise issue is within 60 days of the posting of the seniority roster as provided in Rule 4(b); and, further, if issue is not raised within the prescribed time limitations the seniority rank appearing on the roster stands firm for the balance of the period during which the roster is current. Thus is effected contractual vesting of fixed seniority rights of value to both employees and Carrier.

In the instant case neither Claimant nor the Organization exercised, timely, the right to challenge, as incorrect, the Claimant's seniority rank as listed on the July 1, 1962, seniority roster. That roster, at the time of Claimant's displacement, was current and not subject to attack. On that roster the employee, who displaced Claimant while it was current, ranked seniority-wise, thereon, before Claimant. We find, therefore that Claimant's displacement by Hubbard on December 21, 1962, did not violate Claimant's seniority rights. We will deny the Claim.

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 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

That the Carrier did not violate the Agreement.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 21st day of September 1965.