

Award No. 14023

Docket No. MW-13837

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

William H. Coburn, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYES
ST. LOUIS-SAN FRANCISCO RAILWAY COMPANY**

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

(1) A clerical error was responsible for erroneously listing Mr. William B. Wood on the 1960 and subsequent rosters as having seniority as a second class mechanic in System Concrete Gang as of January 25, 1954.

(2) Mr. William B. Wood's seniority date of January 25, 1954 as a second class mechanic in System Concrete Gang be deleted from the 1960, 1961 and subsequent seniority rosters published by the Northern Division.

EMPLOYES' STATEMENT OF FACTS: Due to a clerical error, Mr. William B. Wood was listed on the 1960, 1961 and subsequent rosters for the System Concrete Gang, Northern Division, with seniority date as a second-class mechanic as of January 25, 1954.

Mr. Wood does not hold any seniority as a second-class mechanic in the System Concrete Gang, having forfeited said seniority on March 4, 1954.

The Carrier has refused to correct the clerical error.

The Agreement in effect between the two parties to this dispute dated April 1, 1951, together with supplements, amendments and interpretations thereto is by reference made a part of this Statement of Facts.

POSITION OF EMPLOYES: On January 7, 1954, the Carrier issued B&B Notice No. 2, bulletining a second-class mechanic's position in the System B&B Department Concrete Gang and on January 28, 1954, Mr. William B. Wood was assigned to this position.

On February 18, 1954, the Carrier issued B&B Notice No. 13, bulletining a house carpenter helper position in Gang No. 5 and Mr. Wood bid on this position.

In its March 10, 1961 letter, the Organization stated:

"... We request that his name be removed from the System Roster as a Concrete Mechanic."

The request was denied.

The aforementioned request was progressed on appeal up to and including the Carrier's highest officer designated to handle such matters. Attached hereto as Carrier's Exhibit A-5 is copy of letter from Carrier's highest officer designated to handle claims wherein the Organization's request was denied.

It is an undisputed fact that timely protest was not filed when the 1960 seniority roster was published and it is the position of the Carrier that failure to timely protest Mr. Wood's listing on the 1960 seniority roster forecloses the deletion from the 1960-1961 and subsequent seniority rosters as requested of the Board by the Organization.

Mr. Wood's name appeared on the 1954 seniority roster and remained on such roster throughout the year without protest from anyone and, similarly, his name appeared on the 1960 seniority roster and remained thereon throughout the year without protest. Mr. Wood's name again appeared on the 1961 seniority roster and more than sixty days elapsed before protest was filed.

It is the Carrier's position that failure to timely protest Mr. Wood's listing on the 1960 seniority roster forecloses the correction on the 1961 and subsequent seniority rosters and the Board is requested to find in favor of the Carrier and deny the Organization's request in its entirety.

(Exhibits not reproduced.)

OPINION OF BOARD: This is a request for the deletion of Mr. William B. Wood's seniority date as a second class mechanic from the 1960, 1961 and subsequent seniority rosters.

The request is filed by the Employees and is based upon a clerical error in compiling the 1960 and 1961 rosters of the Carrier's System Concrete Gang.

Carrier asserts that the demand of the Employees was not timely made because no protest was filed against the inclusion of Mr. Wood's name on either the 1960 or 1961 posted rosters; that, therefore, the request should be denied.

The material facts are not in dispute.

William B. Wood properly established a seniority date on the System Concrete Gang, Northern Division, as of January 25, 1954. His name appeared with that seniority date on a roster posted March 1, 1954.

On March 4, 1954, having been awarded a position of Carpenter Helper, a lower classification, he thereby forfeited his seniority on the System Concrete Gang roster.

Accordingly his name was omitted from the 1955 System Concrete Gang roster, and his name was thereafter properly omitted from all published rosters until the one issued under date of January 1, 1960.

On roster effective January 1, 1960, Mr. Wood's name, in error, was included with his original seniority date of January 25, 1954. No protest was then filed for reasons unexplained.

When the roster for January 1, 1961 was posted, Mr. Wood's name was again shown, in error, with the same seniority date, viz., January 25, 1954.

Under date of March 10, 1961 (69 days later), the General Chairman protested the inclusion of Wood's name on the January 1, 1961 roster and requested its removal therefrom.

This protest and request was denied, properly appealed and denied at every stage of the regular appeal procedure.

Rule 18, Article 2, of the Agreement in evidence is controlling here. It reads:

"Rosters will be revised in January of each year and will be open for correction for a period of 60 days thereafter only to such employees who have entered the service since the roster was revised the January preceding, except clerical or typographical errors may be corrected at any time. Correction in seniority dates will not be made unless protest is filed within 60 days from date of first appearance of employee's name and seniority date on the roster. Rosters shall be in effect from April 1 to April 1 of each succeeding year." (Emphasis ours.)

The Board is of the opinion that the facts of this case fit the exception noted above. The request, therefore, will be granted.

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

That the request be granted.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 17th day of December 1965.