

Award No. 14030
Docket No. SG-14096

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

(Supplemental)

Don Hamilton, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of the Brotherhood of Railroad Signalmen on the Pennsylvania Railroad, as follows:

Roster protest of D. H. Kennedy, Signalman, Middle Division

[System Docket No. 26 — Pittsburgh Region]

EMPLOYEES' STATEMENT OF FACTS: As indicated by the Statement of Claim, this is a roster protest on behalf of D. H. Kennedy, who is presently employed in the signalman class on the Middle Division, Pittsburgh Region of the Pennsylvania Railroad. The protest involves not only his seniority date in the helper class but also his seniority date in the signalman class. The signalman class includes the following Telegraph and Signal Department employees:

Signal Maintainers

Telegraph and Signal Maintainers

Telegraph and Telephone Maintainers

Signalmen

The helper class consists of helpers, only.

The protest arose as a result of certain employees who were hired subsequent to the date on which Mr. Kennedy first entered service as a helper being given dates in the helper class prior to that given to Mr. Kennedy. Messrs. R. E. Fasick and J. C. Brulia are included in this group.

The protest also includes the fact that employees, who were hired after Mr. Kennedy, were given dates in the signalman class ahead of the claimant. This group includes Messrs. Fasick, Brulia, C. E. Leonard and V. L. Rhodes.

The protest was initiated by Mr. Kennedy on May 25, 1951, after the roster for that year was made by Superintendent P. M. Roeper and posted on May 15, 1951. The file indicates that there was considerable handling of the matter on the division, region and at the level of Manager, Labor Rela-

This understanding was entered into by the Carrier's Supervisor, T. & S., Middle Division, and Chairman M. C. Merritts, who is signatory to the Joint Submission (Exhibit C) in the instant case.

Moreover, the Claimant took no exception to the return of any senior employees to their former positions at the cessation of the aforementioned steel strike until April 6, 1953, when he presented the instant issue and the matter covered by Issue No. 2 above to the Superintendent of the Middle Division (See Exhibit B-1a). Notwithstanding the fact that Mr. Kennedy's representative had entered into an understanding with the Carrier providing that employees whose positions were abolished as a result of the strike would not be required to displace a junior employee to protect their seniority, it is readily apparent that the Claimant's protest at such a late date in this matter was not timely.

In view of the foregoing, it is submitted that any contention that the Employees may make in their Ex Parte Submission that the Claimant was aggrieved because the seniority of certain employees was not terminated because of failure to exercise seniority during the "Steel Strike" of 1952 should be disregarded.

III. Under The Railway Labor Act, The National Railroad Adjustment Board, Third Division, Is Required To Give Effect To The Said Agreement And To Decide The Present Dispute In Accordance Therewith.

It is respectfully submitted that the National Railroad Adjustment Board, Third Division, is required by the Railway Labor Act to give effect to the said Agreement and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, Subsection (i), confers upon the National Railroad Adjustment Board the power to hear and determine disputes growing out "of grievances or out of the interpretation or application of Agreements concerning rates of pay, rules or working conditions." The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties thereto. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take such action.

CONCLUSION

The Carrier has shown that no rule of the applicable Agreement supports Kennedy's claim that he is entitled to more favorable helper's and mechanic's dates. Moreover, the protests of his roster dates were not timely.

Therefore, your Honorable Board is respectfully requested to dismiss or deny the claim of the Employees in this matter.

(Exhibits not reproduced.)

OPINION OF BOARD: The issue in this case is the seniority standing of D. H. Kennedy as a Helper and a Mechanic on the Altoona District seniority roster. Mr. Kennedy entered service as a helper on April 25, 1949; furloughed June 14, 1949; recalled as a helper July 18, 1949; acquired advertised helper's position August 24, 1949; furloughed September 3, 1949; recalled as a helper March 30, 1950; promoted to Maintainer April 20, 1951, and acquired

advertised Maintainer's position May 2, 1951. As a result he was given a seniority date of March 30, 1950 and a mechanic's seniority date of May 2, 1951. Mr. Kennedy is asking for a correction of the roster giving him a Helper's date of April 25, 1949, his first date of employment, and a Mechanic's date of April 13, 1951, the date a Maintainer's job at Rose Tower, Altoona, was awarded to a junior employe in preference to him.

As we analyze this dispute, Mr. Kennedy's complaint centers mainly on his relative seniority standing with respect to certain other helpers, Messrs. Brulia and Fasick and the treatment accorded them; also his relative seniority standing as a mechanic with respect to Mr. Leonard.

In the record, the Carrier states "that the helper's dates awarded Messrs. Brulia and Fasick were not in accordance with the established practice on the Middle Division." This is borne out by a review of the service records of five other employes introduced into the record as Brotherhood's Exhibit No. 7, all of whom were apparently treated like Mr. Kennedy. Assuming this is a fact, Mr. Fasick's seniority date as a helper would have been March 27, 1950 and thus prior to Claimant's date of March 30, 1950. Thus, as to Mr. Fasick's seniority date — even assuming it were properly before us, the Claimant has no complaint.

With respect to Mr. Brulia's seniority date, that of course, is not in issue here, and no decision in respect thereto would be proper in these proceedings.

The record indicates that Claimant's Helper's seniority date of March 30, 1950 is in accordance with Article 4, Section 3(d) and therefore correct.

The record indicates Claimant's seniority date as a mechanic on the 1952 seniority roster was first protested by letter dated April 6, 1953. This protest was not timely under the provisions of Article 4, Section 11, and we cannot consider it. Award 12297 (Wolf.) The Carrier also contended Claimant failed to timely protest his helper seniority date, however, in view of our findings already stated, we see no reason to decide this question.

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 Employes involved in this dispute are respectively Carrier and Employes 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 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 17th day of December 1965.