

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 24706
Docket Number MS-24601

Martin F. Scheinman, Referee

PARTIES TO DISPUTE: (James E. Lapcinski and Douglas Schuette
(Chicago and North Western Transportation Company

STATEMENT OF CLAIM: "This is to serve notice, as required by the rules of the National Railroad Adjustment Board, of our intention to file an **ex parte** submission on July 1, 1982 covering an unadjusted dispute between us and the Chicago and Northwestern Railroad Company involving the question concerning the current contract.

Contract provisions provide for new seniority rules under which seniority is accrued only for the period of time you worked in your existing district. The new seniority rules have caused us to lose numerous years of seniority accrued with the Chicago and Northwestern Railroad Company."

OPINION OF BOARD: The parties to this dispute are James E. Lapcinski and Douglas F. Schuette, and the Chicago and North Western Transportation Company.

Lapcinski began work with Carrier as a Signalman on August 5, 1977 in the Illinois District and voluntarily transferred to the Wisconsin District on August 29, 1977. Schuette began work with Carrier as a Signalman on August 24, 1959 in the Illinois District and voluntarily transferred to the Wisconsin District on November 3, 1975. Both individuals did not return to their original districts. Accordingly, under Rule 45 of the then existing Agreements, the seniority of both Signalmen accrued **from** the dates of their transfer rather than from the dates of their original hire.

On January 1, 1982 Carrier and the Brotherhood of Railroad Signalmen entered into an Agreement which included a new Rule 32 covering seniority. Rule 32 provided that a single seniority district shall be established for all Signalmen. As a result of this new Rule, Carrier prepared a unified seniority roster showing each employee's seniority date as of December 31, 1981. In accordance with this Rule and the prior Rule 45, the individuals' seniority dates were the dates of their transfers, rather than their original hire dates.

The Individuals contend that they should be given credit for all seniority accrued with Carrier rather than their starting dates in their district. According to the Individuals, single district seniority under Rule 32 of the Agreement of January 1, 1982 denies them their basic seniority rights accrued under prior Agreements. They further maintain that a single seniority district places them at a disadvantage in competition for jobs with other Signalmen from other districts. Accordingly, the Individuals request seniority credit for all time with Carrier without regard for the district in which the seniority was accrued.

Carrier, on the other hand, asserts that the claim is entirely without merit. First, Carrier maintains that under Rule 45 of the prior Agreement, the Individuals clearly forfeited all seniority which they had accrued during their service prior to their transfers to the Wisconsin Division. Thus, when the new Agreement became effective on January 1, 1982, the Individuals' former seniority was carried forward as it has previously existed. Moreover, Carrier adds that its action was taken jointly with the Organization's General Chairman and was consistently applied to all Signalmen similarly situated.

In addition, Carrier asserts that no claim was properly filed in this case. Carrier notes that all claims must be first submitted to the appropriate Division Manager and then appealed to the chief operating officer designated to hear such disputes. Here, the Individuals wrote directly to Carrier's Director of Labor Relations R. F. Kiley asking for new seniority dates. Thus, Carrier concludes that the individuals failed to file this claim in accordance with the applicable rules of the Agreement. Accordingly, and for these reasons, Carrier asks that the claim be denied in its entirety.

It is clear that this claim must fail. Carrier's seniority roster was established in accordance with applicable rules of the then existing Agreements. Those rules were freely negotiated between Carrier and the Brotherhood. This Board has no authority to change Agreements negotiated by the parties. Stated simply, there is no Agreement violation here.

In addition, we note that no claim was filed in accordance with the appropriate provisions of the Agreement. We have previously held for a claim to be considered on its merits it must be presented to the officer authorized to receive it under the applicable rules of the Agreement (See our Award No. 21344). Here, the individuals filed their "claim" with Director of Labor Relations instead of with the appropriate Division Manager. Accordingly, the claim must fail on procedural grounds as well as on its merits.

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 respectively Carrier and **Employees** 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.

A W A R D

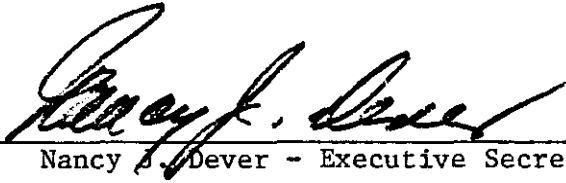
Claim denied.

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By Order of Third Division

ATTEST:

A handwritten signature in cursive script, appearing to read "Nancy J. Dever", is written over a horizontal line.

Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 9th day of March, 1984.