

The Third Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employees  
(  
(National Railroad Passenger Corporation - (Amtrak)  
( Northeast Corridor

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

Claimant A. G. Jones shall be listed on the March 5, 1985 and subsequent TLS MW Repairman and Repairman Helper Rosters with an MW Repairman's and Repairman Helper's seniority date of August 16, 1984 (System File NEC-BMWE-SD-1345R)."

FINDINGS:

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

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Sometime prior to August 1984, the Carrier evidently advertised a M/W Repairman's position on its Track Laying System (hereinafter referred to as "TLS") unit. The TLS unit is one of several Northeast Corridor units established by the Carrier pursuant to Rule 89 of the parties' Agreement. Each of the units so established constitutes a separate seniority district.

When no employee holding seniority under the Agreement applied for the advertised position, Claimant was hired from "off the street" to fill it. Claimant entered the Carrier's service in that capacity as of August 16, 1984.

Shortly thereafter, Claimant bid upon a M/W Repairman position in a New York Division Maintenance Gang. He was awarded that position effective October 4, 1984. Of course, that position was outside the TLS seniority district.

Thereafter, when the Carrier posted the March 5, 1985, seniority roster including the positions of TLS M/W Repairman and Repairman Helper, Claimant did not find himself listed on it in either classification. In a letter

received by the Carrier on April 1, 1985, Claimant protested the Carrier's failure to list him with an August 16, 1984, seniority date on that roster. Claimant relied on Rule 10 of the Agreement, claiming that Rule 10 required that his name appear on the roster with seniority as of his date of hire. Rule 10 provides:

"Seniority

Seniority begins at the time the employee's pay starts. An employee assigned to a position of higher class than Trackman will begin to earn seniority in such higher class and lower classes on the same seniority roster in which he has not previously acquired seniority from the date first awarded an advertised position in such higher class. He will retain and accumulate seniority in the lower class from which assigned. An employee entering service in a class above that of Trackman will acquire seniority in that class from the date assigned to an advertised position and will establish seniority as of the same date in all lower classes on the same seniority roster, except as otherwise provided in Rules 89 and 90."

The Carrier promptly denied the Claim, on the ground that Rule 10 is specifically inapplicable to claims involving Northeast Corridor units, by virtue of the last sentence of Rule 10 which makes an exception for situations covered by Rule 89. In addition, the Carrier argued that, by the terms of Rule 89, seniority on units created pursuant to that Rule is established only upon an employee being "awarded" a position. The Carrier points out that Claimant was hired off the street for the TLS position rather than "awarded" the position pursuant to bid. According to the Carrier, seniority is strictly a matter of Agreement, and the Agreement does not state that an employee earns seniority beginning with the date he is hired into a position; it provides that seniority accrues only upon an employee's being awarded the position.

Finally, the Carrier argues that Claimant in any event forfeited any seniority which he might have acquired as of the date he was hired into the TLS unit. The forfeiture occurred, according to the Carrier, when Claimant bid on and was awarded the M/W Repairman position in the New York Division as of October 4, 1984, since that position was both lower-rated and outside the TLS district. In support of this proposition, the Carrier cites Article V of Rule 89, which provides:

"An employee filling an advertised position in any of the units covered by this Rule must, in order to protect his seniority in such unit, remain in the unit to which assigned during period said unit is in active operation, except:

(1) An employe working in a Corridor Unit may bid on a vacancy of higher rate in another unit in which he holds seniority, or he may make application for an equal or higher rated position on his home seniority district or in a newly created position of equal or higher rate in another unit, and if awarded such position, will be permitted to retain his seniority in the unit from which transferred and may exercise seniority therein after he has exhausted seniority in the unit to which transferred.

(2) An employe upon reaching the end of his region in lieu of moving off his district to the adjoining district, may request to exercise seniority without forfeiture of seniority. Such request may be granted provided another qualified employe is available to replace him.

(3) An employe, failing to exhaust seniority in the unit to which transferred, will forfeit his seniority therein."

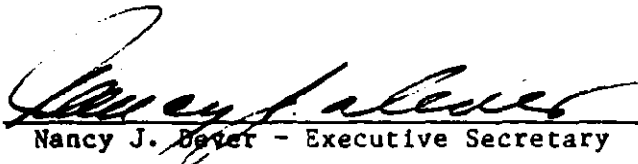
Article V of Rule 89 clearly controls this Claim. Under that provision, Claimant forfeited any seniority he might earlier have accrued in the TLS unit when he succeeded in being awarded the lower-rated position in the New York district. For that reason, the Claim must be denied, without regard to whether Claimant and the Organization are correct that Claimant earned seniority in the TLS position before he forfeited it.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Beyer - Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1991.