

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD  
THIRD DIVISION

Award No. 29653  
Docket No. MW-29383  
93-3-90-3-302

The Third Division consisted of the regular members and in addition Referee Charlotte Gold when award was rendered.

PARTIES TO DISPUTE: (Brotherhood of Maintenance of Way Employes  
(  
(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"Claim of the System Committee of the Brotherhood that:

(1) The Agreement was violated when the Carrier afforded Mr. W. Rankin a seniority date of April 23, 1978 on the 1987 Class 2 Machine Operator's Seniority Roster (System Docket CR-3833).

(2) As a consequence of the aforesaid violation, Mr. W. Rankin's April 23, 1978 seniority date as a Class 2 Machine Operator shall be rescinded and removed from said roster."

FINDINGS:

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

The carrier or carriers and the employee or employees involved in this dispute are respectively carrier and employee 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.

The Claim was instigated by Mr. Herman Johnson, (who believed he was senior to Mr. Mr. Walt Rankin), when Carrier would not allow him to displace Mr. Rankin. The Organization alleges that in altering Mr. Rankin's seniority date at his request in 1985, without reaching an agreement with the Organization, Carrier violated Rule 4, Section 6(c). The Organization requests that Mr. Rankin's seniority date of April 23, 1978, as a Class 3 Machine Operator be rescinded.

A review of the record reveals that Mr. Rankin had protested the seniority date listed for him on the 1982 through 1985 rosters. By letter dated October 1, 1985, the Division Engineer notified him that his seniority date would be changed to April 23, 1978, on the 1986 roster. Mr. Johnson, in turn, protested Mr. Rankin's revised seniority date in 1986 and 1987. In each instance, Mr. Johnson's protest was rejected by Carrier. Copies of Carrier's rejections were sent to the Local Chairman. The present grievance was filed on January 26, 1988.

Whether one considers the protests filed by Mr. Johnson in 1986 and 1987 to be bona fide claims (as Carrier contends) or believes that the January 26, 1988, grievance was the first claim filed in the matter (as the Organization suggests), the present claim must be dismissed as untimely. The 1986 denial should have been appealed within appropriate contractual time limits, since Carrier's decision was made known to both Mr. Johnson and the Organization. Assuming, on the other hand, that the present claim is the first formal grievance in the matter, it also exceeds the timetable set down in the Schedule Agreement for filing claims. By any standard, a delay of two years is not reasonable.

A W A R D

Claim dismissed.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dever, Secretary to the Board

Dated at Chicago, Illinois, this 7th day of June, 1993.