

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert G. Simmons, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
THE LONG ISLAND RAILROAD COMPANY

STATEMENT OF CLAIM: Claim that E. W. Tvrdik's correct seniority date as Signalman-Maintainer on the Long Island Railroad is December 13, 1939.

EMPLOYEES' STATEMENT OF FACTS: On November 27, 1939 a position of signalman was bulletined on the Pennsylvania Railroad (Long Island Rail Road) New York Zone, and W. A. Addayson was appointed to the position on Bulletin 13-A dated December 13, 1939. The appointment was made effective as of December 11, 1939. Addayson is a bona fide New York Division signal department employe and his name and seniority appear on the seniority roster of the Signal Department Employees of the New York Division.

E. W. Tvrdik is a bona fide signal department employe of the Long Island Rail Road and holding seniority thereon made application for the position that Addayson was appointed to on Bulletin 13-A.

The Carrier, in making the appointment, held that Addayson was entitled to establish seniority on the Long Island. In Award 1349, Docket SG-1160, rendered February 4, 1941, the Board found the Carrier was in error in respect to permitting employes to establish seniority on more than one seniority district, therefore, the award, in effect, vacated the appointment of Addayson to the position of Signalman-Signal Maintainer on the Long Island Rail Road.

Subsequent handling of this dispute involving the appointment of Addayson to a position of Signalman-Signal Maintainer ahead of Tvrdik on the Long Island Rail Road resulted in Addayson's name and seniority being removed from the Long Island Rail Road Roster, Addayson's seniority on the New York Division has not been disturbed.

Now, further, between the date of December 11, 1939 (the date Addayson was awarded the position of Signalman-Maintainer) and January 4, 1940 (the date that Tvrdik was awarded a position as Signalman-Maintainer), J. A. Ryan and E. G. Allen, with Long Island Rail Road seniority, were made Signalmen-Signal Maintainers with seniority dates of December 15, 1939 and December 21, 1939 respectively. This established an improper superior ranking for Ryan and Allen over Tvrdik in the Signalman-Signal Maintainer's class on the Long Island seniority roster. This improper ranking of Ryan

Tvrdik made no appeal of his roster standing as Signaller of January 4, 1940, after the 1941 roster was posted. He did, however, make an appeal dated March 4, 1942. Since he had failed to avail himself of his right of appeal after the 1941 roster was posted, he was debarred under Regulation 3-C-3 from thereafter taking any exception thereto. This is clearly shown by that part of Regulation 3-C-3 which provides, "If no appeal is taken within the sixty (60) day period, future appeals will not be entertained unless the employee's roster date or his relative standing is changed from that first posted."

Since Tvrdik's relative standing on the roster was not changed on the 1942 roster over what it had been on the 1941 roster, his appeal could not be given consideration. It is, therefore, respectfully submitted that this appeal must be denied.

IV. 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 (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 dispute in this case grows out of the application of an Agreement concerning rates of pay, rules, and working conditions. The National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it.

CONCLUSION: The Carrier has shown that, under the Agreement, the Claimant is not entitled to the seniority date which he claims and, in any event, he failed to protest his roster standing within the time limit provided for in the agreement, and it can not be given consideration at this time. The Carrier therefore respectfully requests your Honorable Board to dismiss the claim of the Employee in this matter.

The Carrier demands strict proof by competent evidence of all facts relied upon by the Claimant, with the right to test the same by cross-examination, the right to produce evidence in its own behalf at a proper trial of this matter, and the establishment of a record of all of the same.

OPINION OF BOARD: On November 29, 1939, the Carrier bulletined Vacancy 66, a Signaller's position. The closing time for applications was 5:00 p.m., December 6, 1939. Mr. Tvrdik bid for this position. His bid and one other were not considered because Tvrdik and the other man were not then qualified Signallers. The employees state that Tvrdik was qualified on December 12, 1939. The Carrier so states. One Addayson was assigned to the position on December 13, 1939, effective December 11, 1939. Later as a result of Award 1347, Addayson's name was removed from the roster. Tvrdik then demanded that he be given the standing on the roster held by Addayson, this on the ground that Addayson should not have been assigned to the position because ineligible, and that Tvrdik should have been.

The claim is without merit. It is undisputed that Tvrdik was not qualified for the assignment when the filings were open. He would not have been assigned had Addayson not been a bidder. The entire argument in Tvrdik's behalf is conjectural and speculative, and affords no basis upon which it could be determined that Tvrdik would have received the position involved so as to give him seniority as of December 13, 1939, or a position ahead of Ryan and Allen, the men now ahead of him on the roster and whom he desires to rank.

Award 1347 did not change any rights of any employees; it merely declared rights that already existed under the agreement. Whatever rights Tvrdik and the others had under the agreement existed prior to that award

and continued after it. It Addayson was improperly on the roster after Award 1347 was made, then he was improperly on the roster likewise before that award, so the award does not change any of Tvrdik's rights.

Tvrdik was shown junior to Ryan and Allen on the 1941 roster posted January 30, 1941. He was shown in the same relative position and same dates on the 1942 roster, posted January 30, 1942. Rule 3-C-3 provides:

"* * *. An employe will have sixty (60) days from the date his name first appears on a roster to appeal his roster date or relative standing thereon* * *. If no appeal is taken within the sixty (60) day period, future appeals will not be entertained unless the employe's roster date or his relative standing is changed from that first posted.* * *"

Tvrdik has the same dates now that he had when his name was placed on the roster. He made no appeal from the date or relative standing on the 1941 roster. The 1942 roster did not change the date or relative standing. The removal of Addayson's name did not change Tvrdik's date or relative standing. Tvrdik appealed the date on March 4, 1942, seeking by a change of seniority date to change his relative standing. The rule prohibits exactly what Tvrdik seeks to do. It was intended to prohibit any employe seeking to change his roster date or relative standing after 60 days from its first appearance on the roster. The obvious reason for the rule is to have seniority settled at the beginning and prevent the friction between employes that is bound to develop if questions of seniority can be constantly opened up whenever something happens that some employe thinks might possibly have given him a better date or position, had it been known when his seniority date and position were determined.

But the employes say that Tvrdik's right of appeal was kept open by the letter written by the Local Chairman to the Superintendent on June 27, 1939, in which the names of three men were protested as improperly on the roster, and three names protested as not correct as to standing. But this avails Tvrdik nothing. The letter was written before the events in question arose. It makes no mention of Tvrdik. His roster date and relative standing was not then fixed. The rule contemplates an employe appealing "his" roster date or standing. It does not contemplate a blanket appeal which can be kept alive indefinitely and under which any one may seek warmth and shelter.

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 Employees 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 for the reasons given in the opinion, the claim is denied.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson
Secretary

Dated at Chicago, Illinois, this 22nd day of October, 1946.