

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

James M. Douglas, Referee

PARTIES TO DISPUTE:

**BROTHERHOOD OF RAILWAY AND STEAMSHIP CLERKS,
FREIGHT HANDLERS, EXPRESS AND STATION EMPLOYES**

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS

STATEMENT OF CLAIM: Claim of the Terminal Board of Adjustment, Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employees that Mr. Frank Ryan and Mr. Francis Chamberlin be removed from the Group No. 1 Seniority List in District 32.

EMPLOYEES' STATEMENT OF FACTS: Mr. Frank Ryan, with Seniority date of June 13, 1902 as a Gateman, Group No. 2 Employee, was appointed Assistant Station Master, Excepted Position, on July 1, 1922, and Mr. Francis Chamberlin, with seniority of December 19, 1936 as Gateman, Group No. 2 Employee, was appointed Assistant Station Master, "Excepted Position" on October 1, 1941.

Neither of these men had ever acquired seniority in Group No. 1 in this Seniority District, as they were promoted directly to Excepted Positions, and therefore, should not be shown on the Group No. 1 Seniority Rosters.

POSITION OF EMPLOYEES: There is an Agreement between the parties bearing effective date of April 1, 1945, from which the following rules are quoted:

RULE 4

SENIORITY DATUM

(a) Seniority begins at the time the employee's pay starts in the seniority district and in the group to which assigned.

Temporary service does not establish a seniority date in a higher group or on another roster. Such dates are established by assignment to bulletined positions. Employees desiring positions in other groups or on other rosters may file application for same under Rule 18.

(b) When two or more employees commence work on the same day, on the same shift, with the same starting time, they will be placed on the seniority roster in the order in which their applications are filed.

(c) Employees promoted from one seniority group to another, within the same seniority district as defined in Rule 6, will retain and continue to accumulate seniority in the group from which

"In Director of Personnel Wicks' circular letter of March 26, 1945 commenting on the various rules of the new agreement, he requested each department to issue new seniority rosters sometime during the month of April. In discussing the matter with me, he requested that I inform the employees that if there were any errors in their seniority dates, he would like to have them brought to our attention so that the errors might be investigated and if verified have them corrected at this time."

The fact that the positions held by Messrs. Ryan and Chamberlin were included in Group 1(a) of the agreement entitled them to seniority in that group, and the lack of protest against the dates shown on the first roster of that group on the part of any individual or the organization until almost two years later, and after the posting of four rosters, precludes any favorable consideration of the Employees' protest and it should be denied.

(Exhibits not reproduced.)

OPINION OF BOARD: Petitioner seeks to have Carrier remove two employees from the Group No. 1 Seniority List of District 32.

The employees in question had previously established their seniority as gatemen which are Group No. 2 employees. Then on July 1, 1922 and October 1, 1941 respectively, they were appointed Assistant Station Masters which were then excepted positions. Under the agreement in force at the time of their appointments, as holders of excepted positions, they retained all their rights and continued to accumulate seniority in the district from which they were promoted.

A new Agreement was made becoming effective April 1, 1945. Under it: for the first time Assistant Station Masters were included in the scope rule under Group 1 employees. However, the positions of Assistant Station Masters were expressly excepted from the application of all but five rules by the following provision:

"(b) Only Rules 1, 4(d) and 14 (and 24 and 25 in event of complete separation from the service) are applicable to the following positions:" Assistant Station Masters are thereafter designated.

Rule 4 (d) referred to is part of the rule entitled Seniority Datum, and reads:

"(d) Employees now filling or hereafter promoted to official or excepted position shall retain all of their rights and continue to accumulate seniority in the district from which promoted. When official or excepted positions are filled by other than employees covered by these rules, no seniority shall be established by such employment."

From the above rules it clearly appears that the Agreement intended that Assistant Station Masters would not acquire seniority in Group 1 to which they were appointed, even though included in Group 1 in the Scope Rule. In the first place they are excepted from the rule governing employees promoted from one seniority group to another. And of even greater significance they are restricted to holding seniority in the district from which promoted by being placed under Rule 4 (d) by the express terms of the Agreement.

Any understanding reached during the period of negotiating the new Agreement between the representatives of the two parties cannot upset or vary the definite, unambiguous provisions of the written agreement reached as a result of such negotiations. It is the general rule of contract law that a written contract merges all prior and contemporaneous negotiations on the subject. If there was any understanding that these employees would be included in a Group 1 seniority roster, it is invalidated by the terms of the Agreement itself.

New seniority rosters including for the first time the two employes in question as Group 1 employes were posted on April 1, 1945, January 1, 1946, October 3, 1946, and January 1, 1947. No protest was filed until February 17, 1947.

Carrier contends the delay in filing the protest bars Petitioner from now raising the question. However, the Agreement does not support this contention. It does not permanently bar the right to protest as some Agreements do; it merely suspends the right after a roster has been posted for 60 days. Under Rule 6 we find:

"The rosters will be revised and posted in January of each year and will be open to protest for sixty (60) days. Upon presentation of proof of error by any employe or his representative, such error will be corrected. The General Chairman shall be furnished with a copy of all seniority rosters."

Under the circumstances Carrier was not authorized to place the employes in question on the Group 1 Seniority List of District 32 and they should be removed therefrom.

Accordingly, the claim must be sustained.

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 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 Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 30th day of July, 1948.