Award No. 4049
Docket No. CL-3983

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Fred L. Fox, Referee

PARTIES TO DISPUTE:

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

THE PENNSYLVANIA RAILROAD COMPANY

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

(a) The carrier violated the provisions of the Rules Agreement, effective May 1, 1942, when it improperly established seniority date of Anna M. Reese, Clerk, Superintendent Passenger Transportation, Pittsburgh, Pa., as of February 29, 1944, instead of November 16, 1942, in accordance with Rule 3-A-1(c).

(b) Anna M. Reese be compensated for all loss in earnings due to this violation of the Rules Agreement retroactive ninety days from January 17, 1947, the date claim was filed, in accordance with Rule 7-B-1. (Docket C-321)

EMPLOYES' STATEMENT OF FACTS: This dispute is between the Brotherhood of Railway and Steamship Clerks, Freight Handlers, Express and Station Employes as the representative of the class or craft of employes of which the claimant in this case is a part, and the Pennsylvania Railroad Company (hereinafter referred to as the Brotherhood and the Carrier respectively).

There is in effect a Rules Agreement, effective May 1, 1942, covering Clerical, Other Office, Station and Storehouse Employes between the Carrier and the Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e) of the Railway Labor Act, and which has also been filed with the National Railroad Adjustment Board.

This dispute was progressed to the General Manager of the Central Region of the Carrier by means of a joint submission. The General Manager is the "chief operating officer designated to handle labor disputes." This joint submission is attached as the Employes' Exhibit "A" and will be considered as part of this statement of facts. This dispute was further progressed to a meeting with the several General Managers of the Carrier, including the General Manager, Central Region, and a decision was given, dated April 8, 1947, as follows:

"The facts in this case are summarized as follows:

Anna M. Reese established seniority date of October 27, 1941, in the office of Superintendent Freight Transportation in the Central Region. Beginning November 16, 1942, and continuing until Feb-

CONCLUSION

The Carrier has shown that under the applicable Agreement between the parties to this dispute that the Claimant is not entitled to be shown on the seniority roster of the Superintendent Passenger Transporation, Pittsburgh, Pa. seniority district with a date of November 16, 1942; that her correct seniority date on that roster under the provisions of the applicable Agreement should be February 19, 1944, instead of February 29, 1944 as now shown; and that she suffered no monetary loss as a result of this change in her seniority date from February 29, 1944 to February 19, 1944.

It is, therefore, respectfully submitted that the claim is not supported by the applicable Agreement and should be denied.

(Exhibits not reproduced.)

OPINION OF THE BOARD: The facts in this case are not in dispute. The claim is filed by the Organization on behalf of Anna M. Reese, who was given seniority as a Clerk in the office of the Superintendent Passenger Transportation of the Carrier, in Pittsburgh, Pennsylvania, dating from February 29, 1944, when, it is claimed, that such seniority should have dated from November 16, 1942, the date when, as is contended by Petitioner, she first began work, and her pay started, in the seniority district which embraced employes within the Clerks' Agreement, employed in the Passenger Transportation Office aforesaid.

These are the admitted facts in the case: Prior to November 16, 1942, and, to be exact, on October 27, 1941, the Claimant, Anna M. Reese, established her seniority, as of that date, in the office of the Superintendent of Freight Transportation, at Pittsburg, in the Central Region of the Carrier, a seniority which she has, at all time, continued to hold, with the present right to exercise the same. In this situation, and beginning November 16, 1942, Claimant was, in the language of the Employes' submission, "loaned to the office of Superintendent Passenger Transportation on various occasions to fill temporary vacancies or for extra work." During the period when Claimant was performing this character of service, several positions or vacancies were advertised in the Passenger Transportation Office, but, as she had the right to do, Claimant did not bid for any of such positions, until February, 1944, when position Symbol XSP-1, in said office, was established and bulletined, the same to be effective February 29, 1944. The Claimant bid for and was awarded this permanent position, and, it is now conceded by the Carrier that her seniority in the Passenger Transportation Office should have dated from the 19th of February, 1944, the date when the position was bulletined, rather than February 29, 1944, when it was actually awarded to her. The seniority she thus acquired in the Passenger Transportation Office, was in a different Seniority District from that in which she worked and held seniority in the Freight Transportation Office. The sole question here involved is whether the Claimant's seniority in the Passenger Transportation Office should date from November 16, 1942, or should it stand as of February 19, 1944, the date assigned her by the Carrier.

The answer to this question depends on the construction of Rule 3-A-1 (c) of the controlling Agreement, which reads:

> "A new employe or an employe transferred from another seniority district under Rule 2-A-9 who fills a position pending the bulletining thereof shall not be considered as establishing seniority under paragraph (a) of this Rule (3-A-1) by such employment. Such an employe shall acquire seniority on the date he is awarded a bulletined position and his seniority will date from the day on which his pay started in that seniority district."

It is the last sentence of the quoted rule which creates the dispute. The Petitioner contends that the language employed means what it says, and should be given a literal construction; that the Claimant began work in the Passenger Transportation Office on November 16, 1942; that her pay started on that day; and, therefore, when her permanent position was awarded her,

and seniority was established in the Passenger Transportation Office, it became, in effect, retroactive to November 16, 1942. The contention of the Carrier is that the pay of an employe, in a given seniority district, cannot start until such employe holds a regularly assigned position in that district, or works an established position, pending the building of the same; in which event, seniority will date from the day the pay of the employe starts for work performed in the position being bulletined, in the seniority district in which the position was established, and is in the course of being awarded, and that the rule should be so interpreted.

The Claimant first worked in the Freight Transportation Department, and has seniority therein. While retaining that seniority, as, under the Agreement, she could do, she filled temporary vacancies, and performed extra work in the Passenger Transportation Office, in the same terminal, but in a different seniority district. This was her status between November, 1942, to February, 1944. Strictly and technically speaking, she was not a regular employe in the Passenger Office, until February 29, 1944, when she was awarded a then lately established permanent position. The pay she had theretofore received for temporary and extra work was not, in our opinion, pay in that seniority district, within the meaning of Rule 3-A-1(c), because Claimant, at that time, had no standing in that district. We think that the provision of the rule which expressly covers a new employe, or, as in this case, a transferred employe, and says that his seniority cannot be established until he has received a bulletined position controls; and our construction of its meaning is supported and strengthened by the language of the rule stating definitely when seniority is established, that is, "on the date he is awarded a bulletined position". We think the language which follows: "and his seniority will date from the day on which his pay started in that seniority district" must be construed to mean from the day his pay started in that seniority district for the work of a position regularly established, and in the process of being bulletined.

The position awarded the Claimant on February 29, 1944, was not in existence during the period of time she was filling temporary vacancies and doing extra work. She did not bid for other position established during that period. The fact that she did not bid for them is not to be held against her; but when she did not bid for them, she elected to continue without a regular job, and without a seniority rating in that district. Not having any seniority rating in that district she could not be assigned a regular position, and, in fact, she did not ask for one, or bid therefor. Evidently, she was waiting for a position she thought she would like, and for doing this she will not be condemned; but, in so doing, she must accept the consequences as they pertain to seniority rights. Prior to about February 19, 1944, Claimant was not holding any position in the Passenger Transportation Office, "pending the bulletining thereof", and we do not think her case is one which comes within the rule which would, in those circumstances, make seniority retroactive, beyond the date when she began work on a regularly established position. Her seniority should have dated from the date when position Symbol No. XSP-1 was established as a permanent position, and she was assigned to work the same pending its bulletining and award to the person entitled to the same, and this date appears to have been February 19, 1944. While her seniority in the Passenger Transportation Office should have dated from February 19, 1944, it clearly appears from this docket that Claimant has not been, and will not, in the future, be prejudiced by reason of being given such priority as of February 29, 1944. The one person who established seniority over Claimant, in said office and district, did so in December, 1942, and therefore the mistaken assignment, aforesaid, is harmless, and does not constitute a violation of the Agreement.

The importance of seniority to employes is so great, that there should be fixed and settled rules for the guidance of the Carrier. Ordinarily, it is of little consequence to the Carrier as to who holds seniority in a given office or craft. Fixed and definite rules benefit the employe, and serve to prevent injustices. We are of the opinion that the common interest of all employes will be best served by construing the rule here involved as requiring seniority

to date from the day an employe begins work on an established position, then in process of being bulletined and awarded, and not at some date, many times vague and uncertain, when an employe may have performed intermittent work in the same office or district, with no seniority rights therein, or any assurance of a situation arising under which such rights would develop. The construction we follow tends to provide a definite and safe guide; while the construction contended for by the Petitioner, would, in our opinion, lead to uncertainty, confusion and inevitable disputes between employes, and with consequent embarrassment to the Carrier, which, under the Agreement must first act on the dispute, and assume the monetary loss resulting from a guess which afterwards proves wrong. Probably disputes over seniority will continue to arise, but the construction we give the rule here involved will tend to lessen their number.

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 hold:

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 there was no violation of the Agreement.

AWARD

Claims (a) and (b) denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 10th day of August, 1948.