

Award No. 5088

Docket No. CL-5091

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

Edward F. Carter, 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, filed for and in behalf of Kenneth T. Smith, present occupation, Clerk, that:

His seniority date as a Group 2 employe on the Monongahela Division Group 2 Seniority Roster be corrected to read December 1, 1930, as shown on supplement to the 1935 Roster issued as of April 9, 1935. (Docket C-409).

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 in which the Claimant in this case holds a position 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 this Brotherhood which the Carrier has filed with the National Mediation Board in accordance with Section 5, Third (e), of the Railway Labor Act and also with the National Railroad Adjustment Board. This Rules Agreement will be considered a part of this Statement of Facts. Various Rules thereof may be referred to herein from time to time without quoting in full.

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 Employes' Exhibit "A" and will be considered as a 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 in letter to the General Chairman dated January 14, 1949, the claim of the Brotherhood in this case was denied.

Claimant K. T. Smith established seniority in the Miscellaneous Forces Group (now Group 2) Monongahela Division, and was shown on seniority roster with seniority date of December 1, 1930.

He was furloughed account reduction in force on November 3, 1932, and on April 18, 1934, while on furlough, was assigned by the Carrier to a position in the Electrification Project of the Carrier and remained in that capacity

CONCLUSION

The Carrier has shown that under the applicable Agreements between the parties to this dispute, the Claimant has been accorded his proper seniority date on the roster of Group 2 employees, Monongahela Division.

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

(Exhibits not reproduced.)

OPINION OF BOARD: This claim involves the seniority status of K. T. Smith. Claimant Smith established seniority in the Miscellaneous Forces' Group (now Group 2), Monongahela Division, on December 1, 1930. The name of Claimant Smith was left off the roster posted on April 2, 1935. On April 9, 1935, after a protest by Smith, his name was restored to that roster. The 1936 roster was posted on January 14, 1936, and the name of the claimant was again left off. He protested within the time provided but his name was not restored. The 1937 roster was posted on February 13, 1937, and Smith again protested within the time prescribed.

The record shows that claimant was occupying a position of warehouseman on November 3, 1932, at which time he was furloughed. Claimant performed no work for the Carrier until April 18, 1934, when he secured employment as a laborer on the New York-Washington Electrification Project. He was released from this employment on August 15, 1935. On October 17, 1935, he obtained employment as a trucker on the Pittsburgh Division, which employment has no bearing upon the issue before us. On August 13, 1936, he was again employed on the Monongahela Division as a warehouseman in Group 2. He subsequently transferred to a clerk's position on September 23, 1943. He was given a seniority dating of August 13, 1936.

We think it must be conceded that claimant's seniority date was established as December 1, 1930 by the seniority roster posted on August 9, 1935. It is the contention of the Carrier that this seniority dating was lost by the claimant by virtue of Rule 3-C-1 as it existed prior to June 1, 1936, which provided that "Employees who have been out of service in excess of nine months will be dropped from service but will be given preference for re-employment." Upon the negotiation of this rule into the agreement, effective February 16, 1935, the Carrier on January 14, 1936, dropped the name of claimant from the roster for the reason that he had been furloughed for more than nine months.

We concur with the Carrier that the work performed by claimant on the New York-Washington Electrification Project did no more than preserve his status as a furloughed employee during that period because of the special understanding entered into by the Regional Chairman of claimant's Organization and the Carrier. A more detailed discussion of this phase of the case is not necessary.

It is clear that on April 9, 1935, claimant's status as a furloughed employee was established. He had protested the deletion of his name from this roster and his protest had been sustained by the Carrier and his name restored. On January 14, 1936, claimant's name was again taken off the Group 2 roster for the reason that he had been out of service for more than nine months. The conclusion of the carrier that the claimant had been out of service more than nine months is correct. The only question remaining is whether Carrier complied with the Agreement when it removed his name from the 1936 roster issued on January 14 of that year.

It is the contention of the Organization that the Carrier failed to comply with that part of Rule 3-D-1 of the applicable agreement providing:

"No change in the seniority standing of any employee will be made by the Management without conference and agreement with the

Committee representing the employees. Five copies of the roster will be furnished the Local Chairman."

The Carrier did not confer with the Organization with respect to the removal of claimant's name from the 1946 roster. No agreement was made with reference thereto. Carrier contends that the removal of claimant's name from the 1936 roster was not a change in the seniority standing of the claimant for the reason that his seniority rights had already been terminated under Rule 3-C-1, a self-operating rule. The determination that an employee has lost his seniority under plain provisions of the Agreement, is not a change in the seniority standing of the employee within the purview of Rule 3-D-1. The manner of terminating the employer-employee relationship is provided by other rules in the Agreement. It is a change only in the seniority standing of an employee, furloughed or otherwise, which is within the contemplation of Rule 3-D-1. The termination of the relationship is treated in other rules of the Agreement of which Rule 3-C-1 is one. We think the Carrier was obliged to give effect to the plain provisions of Rule 3-C-1 and remove claimant's name from the roster. It was the parties who negotiated the rule. Our function is to apply it as made.

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 Employees 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

The Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: A. I. Tummon
Acting Secretary

Dated at Chicago, Illinois, this 3rd day of November, 1950.