

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Curtis G. Shake, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA

THE PENNSYLVANIA RAILROAD COMPANY

STATEMENT OF CLAIM: The General Committee of the Brotherhood of Railroad Signalmen of America on the Pennsylvania Railroad protests the inclusion of the names of F. Fines and F. C. Hill in the Foremen's class on the Indianapolis Division T. & S. Employees Seniority Roster and requests that the above-mentioned names be removed from said seniority roster in the Foreman's class.

EMPLOYEES' STATEMENT OF FACTS: At the time this protest was initiated on the property, F. Fines was an Assistant Supervisor on the St. Louis Division. He was promoted to this position on May 11, 1943, while working as Inspector T. & S. on the Chicago Terminal Division. F. C. Hill was Supervisor T. & S. on the Indianapolis Division. He was appointed to this position on May 1, 1943, while working as an Inspector T. & S. on the Cincinnati Division.

Provisions governing the seniority status of employees accepting promotion to a position in the T. & S. Department not covered by this agreement were incorporated in the T. & S. Agreement dated June 1, 1943.

For ready reference, we quote Article 4, Section 13 of the 1943 Agreement:

"(a) An employee accepting or who has accepted promotion to a position in the Telegraph and Signal Department not covered by this Agreement shall retain and continue to accumulate seniority on the operating division from which appointed, and if he returns to the service covered by this Agreement he may exercise his seniority in accordance with the provisions of Article 4, Section 8, or Article 4, Section 20.

(b) An employee accepting or who has accepted promotion to a supervisory, official or special duty position in other than the Telegraph and Signal Department on or after May 5, 1936, shall retain and continue to accumulate seniority on the operating division from which appointed, and if he returns to the service covered by this Agreement he may exercise his seniority in accordance with the provisions of Article 4, Section 8, or Article 4, Section 20.

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, which constitutes the applicable Agreement between the parties and to decide the present dispute in accordance therewith.

The Railway Labor Act in Section 3, First, subsection (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 National Railroad Adjustment Board is empowered only to decide the said dispute in accordance with the Agreement between the parties to it. To grant the claim of the Employees in this case would require the Board to disregard the Agreement between the parties hereto and impose upon the Carrier conditions of employment and obligations with reference thereto not agreed upon by the parties to this dispute. The Board has no jurisdiction or authority to take any such action.

The Carrier has shown that under the specific terms of the Agreement it was required to show the names, seniority dates and rank in the Foreman Class of the individuals involved and, therefore, the removal of said names from the Indianapolis Division roster as requested by the Employees would be contrary to the terms of the Agreement.

Therefore, the Carrier respectfully submits that your Honorable Board should dismiss the claim of the Employees in this matter.

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

All data contained herein have been presented to the employees involved or to their duly authorized representatives.

(Exhibits not reproduced.)

OPINION OF BOARD: By this claim the General Committee of the Brotherhood of Railroad Signalmen of America has protested the Carrier's action in placing the names of F. Fines and F. C. Hill in the Foreman's Class on the seniority roster of the Indianapolis Division.

Between 1929 and 1943 Fines worked at various times on positions in the Foreman's Class on the Indianapolis, Cincinnati and Chicago Terminal Divisions. On May 1, 1943, he was promoted from the Foreman's Class on the Chicago Terminal Division to supervisor, T. & S., St. Louis Division. Hill held positions in the Foreman's Class on the Indianapolis, Toledo, Columbus and Cincinnati Divisions between 1928 and 1943, and on May 1, 1943, was promoted from the Foreman's Class, Cincinnati Division, to assistant supervisor, T. & S., Fort Wayne Division. As of January 1, 1945, Carrier placed the name of Fines on the seniority roster of employees in the Foreman's Class on the Indianapolis Division and assigned him a seniority date of April 22, 1929. At the same time the name of Hill was placed on the same roster, with seniority date of April 26, 1930.

The Organization contends that Fines' name should have been placed on the foreman's seniority roster of the Chicago Terminal Division, with seniority from May 16, 1942, because that was the division from which he was promoted to supervisor and his proper seniority date on that division. It is likewise contended, on the same basis, that Hill's name should have been placed on the foreman's seniority roster of the Cincinnati Division, from whence he was promoted to supervisor, and that his proper seniority date on the foreman's roster of that division was May 5, 1940.

During the pendency of the claim before this Board notice was given Fines and Hill, in response to which they filed submissions and were heard.

Article 4, Section 1 (a) and (b), of the Agreement of June 1, 1943, provides that inspectors, assistant inspectors, foremen and assistant foremen shall constitute a separate seniority unit, to be called the "Foreman Class."

Two other provisions of the June 1, 1943 Agreement are here pertinent. Article 4, Section 11 (b) provides, in part:

"The names and seniority standing of all employees holding seniority rights under this Agreement, including promoted employees occupying positions below the rank of staff officer to the Superintendent, shall appear on the seniority roster of the particular division on which they hold seniority."

And Article 4, Section 13 (a) reads:

"An employe accepting or who has accepted promotion to a position in the Telegraph and Signal Department not covered by this Agreement shall retain and continue to accumulate seniority on the operating division from which appointed, and if he returns to the service covered by this Agreement he may exercise his seniority in accordance with the provisions of Article 4, Section 8, or Article 4, Section 20."

The Carrier contends that it was not intended that the Agreement of June 1, 1943, should take away from the employes, such as those here involved, seniority rights which they had earned prior to the effective date of that Agreement. Carrier says that it proposed a new rule that would have clarified such rights but, that while the Organization rejected the proposal, its Grand President recognized the principle for which the Carrier contends by suggesting the following hypothetical solution for the problem at hand:

"An employe in the Mechanic group on Division 'A' who was promoted to a position in the Foreman Group on that division in the year 1925 and was transferred to a position in the Foreman Group on Division 'B' in the year 1930, and in the year 1935 was transferred to a position in the Foreman Group on Division 'C', from which division he was appointed to a position in the T. & S. Department not covered by the Telegraph and Signal Schedule Agreement, would have his name appear in the Foreman seniority group only on the roster of Division 'C'. If he is relieved from the position not covered by the Telegraph and Signal Schedule Agreement to the Foreman Group, he would return to Division 'C' to exercise his Foreman seniority, on the basis of the 1935 date. If he is unable to secure a position in the Foreman Group on Division 'C', he would return to Division 'A' and exercise his mechanic seniority in the Mechanic Group. If he thereafter was promoted on Division 'A' to a Foreman's position his seniority would date back to the year 1925."

Finally, the Carrier says that our Award 3625 is decisive on the issue presented.

The Organization urges that since, on June 1, 1943, Fines and Hill had already been assigned to positions in the Telegraph and Signal Department not covered by the Agreement, the express language of Article 4, Section 13 (a) applies, and that, as a consequence, they were only entitled to "retain and continue to accumulate seniority on the operating division from which appointed," as provided in said Rule. They also point out that Article 4, Section 11 (b) says, in effect, that employes holding seniority rights who are promoted to supervisory positions shall retain seniority on the particular "division"—not "divisions"—, and that this is in harmony with that part of Article 4, Section 13 (a), referred to above.

In Award 3625 the same Carrier, Organization and Agreement were before this Board as in this case. In that case the Carrier posted a seniority roster on its Panhandle Division on February 15, 1945, assigning seniority dates in the Foreman's Class, ranging from 1926 to 1940, to six named employees who had occupied supervisory positions excepted from the scope of the Agreement prior to June 1, 1943. There, as here, the Organization contended that the provisions of the Agreement of June 1, 1943, quoted above, precluded the Carrier from so listing said employees on said seniority roster.

It must be pointed out, however, that in Award 3625 the third parties involved were not before the Board in their own right and that the roster to which their names were assigned by the Carrier was that of the divisions from which they had been promoted to supervisory positions.

The Organization says that the facts upon which Award 3625 was predicated distinguish it from the present case, while the Carrier says that, on principle, that Award is controlling.

From 1921 to 1943 there was in effect an agreement between the Carrier and another organization, Rule 2-B-1 of which provided that, "A Foreman or Assistant Foreman in the Telegraph and Signal Department will retain seniority in the class from which promoted, but cannot exercise such seniority except when reduced." Foremen and assistant foremen were not within the coverage of the Carrier's agreement with the Organization here represented, however, until the negotiation of the Agreement which became effective on June 1, 1943. Fines and Hill rely upon rights established under the preceding Agreement, as well as on the present contract, and ask, on the basis of equity, that their names be carried on the rosters of the various divisions on which they have held positions in the Foreman's Class; that in the event they may be required to exercise their seniority in the future they be permitted to choose the district in which they desire to retain seniority in the Foreman's Class, but that if they cannot be accorded that right they be given the privilege of making such choice at this time.

This Board has no responsibility to write a contract for any of the parties, and we are not required to decide any controversy existing between them, other than whether the Carrier violated its contractual obligations to the parties by placing the names of Fines and Hill in the Foreman's Class on the seniority roster of its Indianapolis Division, as it did.

Award 3625 is authority for the proposition that it is not a violation of the present and effective Agreement for the Carrier to list the name of an employe who has acquired seniority in the Foreman's Class on the seniority roster of the division from which he is promoted to a supervisory position, and to give him a date on such roster reflecting his seniority in that class and on that division. This sufficiently disposes of the contention of the Organization that the seniority dates of Fines and Hill should have been the dates of their promotions to supervisory positions.

We have been cited to no authority that would justify us in holding that Fines and Hill are entitled to have their names listed on the seniority lists of the several divisions on which they have heretofore held positions in the Foreman's Class. The express language of Article 4, Section 13 (a), *supra.*, precludes any such holding. While seniority rights are valuable to an employe, and he cannot be lightly deprived thereof, (Award 3249), such rights do not exist unless created by contract. In the case of *Casey v. Brotherhood of Locomotive Firemen and Enginemen*, 197 Minn. 189, 192, the Supreme Court of Minnesota said, in a unanimous opinion:

"Aside from contract, there is no inherent or fundamental right to preference by virtue of seniority in service. Therefore, the matter of seniority or place upon the seniority list is subject to the contract between the parties."

There is nothing in Rule 2-B-1 of the 1921 Agreement between the Carrier and its Foremen and Assistant Foremen that creates any such rights as the Carrier or Fines and Hill here claim; and Article 4, Section 13 (a), of the effective Agreement of June 1, 1943, precludes any such application. If inequities have resulted, these can only be avoided by a revision of the Agreement.

Fines and Hill are entitled to have their names listed on the seniority rosters of the Chicago Terminal and Cincinnati Divisions, respectively, with seniority dates reflecting their previously acquired seniority on said divisions, prior to their promotions to supervisory positions. The Organization's protest against the listing of the names of said employees in the Foreman's Class on the Indianapolis Division is, therefore, sustained, and the individual demands of Fines and Hill are likewise denied.

The alleged admission against interest of the Organization's Grand President, which the Carrier has called to our attention and which is quoted above, was apparently written in a fruitless effort to negotiate a new rule. Under these circumstances it cannot be regarded as a binding commitment. Neither does the record sustain the Carrier's contention that the Claim was abandoned.

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

That the Carrier violated the Agreement.

AWARD

Claim of the Organization sustained; claims of respondents F. Fines and F. C. Hill denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: (Sgd.) A. Ivan Tummon
Secretary

Dated at Chicago, Illinois, this 4th day of February, 1955.