

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

H. Raymond Cluster, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

MISSOURI PACIFIC RAILROAD COMPANY

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

(1) The Carrier violated the effective Agreement when it changed the seniority date of Extra Gang Laborer Bonnie Green from that shown on the 1951 seniority roster and allowed Mr. Green to remain in service, while Extra Gang Laborer Arnold J. Whitson was furloughed in force reduction;

(2) The seniority date of Extra Gang Laborer Bonnie Green be corrected to coincide with the date shown on the 1951 seniority roster;

(3) Extra Gang Laborer Arnold J. Witson be compensated for all wage loss suffered because of the violation referred to in part (1) of this claim.

EMPLOYEES' STATEMENT OF FACTS: Extra Gang Laborers Bonnie Green and Arnold J. Whitson were on June 8, 1951 regularly assigned to Extra Gang No. 5, Ozark, Arkansas, under the supervision of Extra Gang Foreman J. N. Wright, with seniority dates listed on the 1951 Central Division seniority roster as follows: Green, August 16, 1948; Whitson, July 12, 1942. The seniority date of July 12, 1942 accredited to Mr. Whiston on the above referred to roster was subsequently revised to read July 12, 1943.

On June 8, 1951, the personnel of Extra Gang No. 5 was reduced from fourteen men to ten men.

In effectuating this force reduction, the Carrier changed the seniority date of Extra Gang Laborer Green from August 16, 1948 to October 4, 1916 and retained Mr. Green in service in preference to Laborer Whitson.

The change in seniority dates resulted in the furlough of Laborer Whitson, who suffered a wage loss from June 8, 1951, to September 21, 1951, date the personnel of Extra Gang No. 5 was increased and Mr. Whitson was recalled to service.

Claim was filed in behalf of Laborer Whitson because of the mishandling of seniority. Claim was declined as well as all subsequent appeals.

ment while he was working temporarily on the section at Ozark by direction of the management and that errors in compilation of the seniority rosters cannot serve as a means of depriving him of his seniority rights. Therefore, Green is senior to Claimant Whitson as an extra gang laborer and there is no basis for payment of this claim.

(Exhibits not reproduced.)

OPINION OF BOARD: On the seniority roster for the Central Division, posted January 1, 1951, Claimant was shown with a seniority date of 7-12-42 on Extra Gang No. 5 and Bonnie Green was shown with a seniority date on the same gang of 8-16-48. On June 8, 1951, the number of men in Extra Gang No. 5 was reduced from fourteen to ten; in this force reduction, Claimant was laid off and Bonnie Green was retained, despite the fact that according to the roster, Claimant was senior to Green. The claim asserts that the layoff of Claimant was a violation of the Agreement and requests that Claimant be compensated for all wage loss occasioned by the violation.

The record shows that Green originally had a seniority date on Extra Gang No. 5 roster of 4-16-16. In 1944, it appeared on the roster as 10-4-16 and continued to appear so each year through 1948. In 1949 and 1950, it disappeared from the Extra Gang No. 5 roster and was carried on a different roster—Section No. 10—as 8-16-48. In 1951, it reappeared on the Extra Gang No. 5 roster as 8-16-48. The record shows that from 1942 until August of 1948, Green worked regularly on Extra Gang No. 5. On August 16, 1948, he was transferred to Section 10 and worked there until on or about January 25, 1949, at which time he returned to work on the extra gang. Thereafter, in 1949, 1950 and 1951 he again worked regularly on Extra Gang No. 5. The change in Green's seniority date from 4-16-16 to 10-4-16 in 1944, the disappearance of his name from the roster for 1949 and 1950, and its appearance on the 1951 roster as 8-16-48, the day he left the gang to work on the section, are all unexplained in the record. In addition to these inaccuracies and discrepancies in the rosters, it also appears that Claimant's seniority date was incorrectly carried on the roster as 7-12-42, when it should have been 7-12-43.

It is Carrier's contention that the seniority date shown for Green on the 1951 roster was wrong and that his proper seniority date is 10-4-16. According to Carrier, Green was transferred to Section No. 10 in 1948 by order of the Carrier and not at his own request; therefore, his seniority in Extra Gang No. 5 was preserved under Rule 6 of the Agreement.

Claimant argues that under Rule 4(c) of the Agreement, seniority dates appearing on the roster are permanently established if not protested within 90 days; Green's failure to protest his omission from the 1949 and 1950 rosters, and the date of 8-16-48 on the 1951 roster, barred the Carrier from giving him a date of 10-4-16 for purposes of the June 8, 1951 force reduction and on subsequent rosters. Additionally, Claimant disputes the fact that Green's transfer in 1948 was involuntary and contends that the transfer and change in seniority date at that time were by agreement.

Rule 4 provides:

“(a) Seniority rosters of all employes, in each sub-department by seniority districts, will be separately compiled and will show the name, classification and date of entry of the employe into the service, and date of promotion.

“(b) Rosters will be revised in January of each year and open to correction for a period of ninety (90) days thereafter.

“(c) Seniority dates shall be considered permanently established, if not protested within ninety (90) days from time of first posting.

"(d) The names of laborers will not be included and their seniority rights will not apply until they have established a seniority date under provisions of Rule 1-(b).

"(e) Copies of seniority rosters will be furnished foremen to be posted in tool houses, outfit cars and other convenient places available for inspection by employes concerned. Copy will be furnished General and Local Chairman."

Rule 6 provides:

"(a) Employes or gangs temporarily transferred by direction of the management, from one seniority district to another, will retain their seniority rights on the district from which transferred.

"(b) Employes assigned to temporary service may, when released, return to the position from which taken without loss of seniority.

"NOTE: Foremen who are taken from their regular assignments to serve on extra gangs, when released therefrom may return to the position which they held at the time of promotion, provided such position is in existence. If the position is no longer in existence, they may exercise their seniority by displacing a junior regular assigned foreman on their seniority district.

"(c) Except for temporary service, employes will not be transferred to another division unless they so desire."

We take the view expressed in Award 3625 that a seniority roster does not of itself establish seniority but is merely the means of formally recognizing the seniority to which an employe is entitled. Rule 4(c) must be considered not alone, but in conjunction with other Agreement rules. In this case, the means by which employes establish seniority are set forth in Rules 1 and 2 of the Agreement. It is not within the purview of Rule 4 to take away from any employe seniority rights to which he is entitled under Rules 1 and 2, or to give any employe seniority rights which he has not earned under those rules; rather, it is intended to support him in the assertion of his proper rights. It is obvious from the record that the seniority rosters on this property are not prepared, checked and maintained with sufficient care so that they can be relied upon as the final authority as to the seniority of employes, to the exclusion of the consideration of records and other pertinent evidence which may show that the rosters are incorrect. For these reasons, we feel that in this case the claim cannot be supported by reliance solely upon Rule 4(c), and we must look to other evidence to determine Green's actual seniority date.

We are convinced that Green did not request or agree to a permanent transfer from Extra Gang No. 5 to Section 10 in 1948, or to a relinquishment of his seniority rights on the extra gang at that time. In view of his service with the extra gang before and after the transfer, and Carrier's statement that the transfer was at its request, we find that Green was assigned to temporary service on Section No. 10 and was entitled to return to his position on the extra gang without loss of seniority, under Rule 6. Thus, his proper seniority date on the 1949, 1950 and 1951 Extra Gang No. 5 roster was 10-4-16, the same as it was in 1948.

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 the Agreement was not violated.

AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: A. Ivan Tummon
Executive Secretary

Dated at Chicago, Illinois, this 19th day of December, 1956.