

Award No. 10283
Docket No. SG-9891

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION
(Supplemental)

Arthur Stark, Referee

PARTIES TO DISPUTE:

BROTHERHOOD OF RAILROAD SIGNALMEN OF AMERICA
NEW YORK, NEW HAVEN AND HARTFORD RAILROAD
COMPANY

STATEMENT OF CLAIM: Claim of the General Committee on the New York, New Haven and Hartford Railroad Company that:

(a) The Carrier violated and continues to violate the current agreement when it fails to show the proper seniority date on the New Haven Division roster for Mr. Walter P. Connor.

(b) The Carrier now restore Mr. Walter P. Connor to his proper place on the seniority roster with proper seniority date of January 24, 1955, as Signal Helper and February 24, 1955, as Assistant Maintainer.

BROTHERHOOD'S STATEMENT OF FACTS: Mr. W. P. Connor was employed by the Carrier on the Boston Division of the property as a Signal Helper and was furloughed in January 1955. He was offered an opportunity to work as a Signal Helper on the New Haven Division as provided for in Rule 36, and he accepted and started work as a Signal Helper on January 24, 1955. On Bulletin #19, dated February 24, 1955, Connor was assigned to the position of Assistant Signalman on a gang and he worked on that position until he bid on and was assigned to a position of Assistant Maintainer with headquarters at Tower 79 Mill River Jct. on Bulletin #47, dated June 27, 1955.

Bulletins #17, #19, #43, #47, are reproduced and attached hereto and are identified as Brotherhood's Exhibits Nos. 1, 2, 3, and 4, respectively.

The above-mentioned bulletins will show the positions and assignments of W. P. Connor while employed on the New Haven Division.

The Carrier published the seniority roster for 1956, and Connor was shown as having a seniority date as Signal Helper as of June 10, 1955, and as an Assistant Maintainer as of June 27, 1955.

is not empowered to do this. That this is so has been recognized by the Board in its Opinion in Award 1792, among others, from which we quote:

"The Agreement failing to provide seniority . . . , this Board should not by an award giving effect to Claimant's contentions, step in and write any such rule into the Agreement."

Rule 31, quoted in part above, is clear and unequivocal in its terms that "... seniority rights of employees are confined to one seniority district." Claimant could not, therefore, hold seniority in more than one seniority district at any one time.

In our opinion, Rule 31 is controlling.

All of the facts and arguments used in this case have been affirmatively presented to Employees' representatives.

OPINION OF BOARD: The relevant chronological history of this case, involving the seniority date of W. P. Connor, may be summarized as follows:

June 22, 1954. Connor was furloughed from Signal Helper's position on Boston Division (he had been employed on January 19, 1953).

January 24, 1955. First day of work as Signal Helper on New Haven Division. This assignment was obtained in accordance with provisions of Rule 36.

February 24, 1955. First day of work as Assistant Signalman on New Haven Division. This temporary position was bulletined on February 11, but no bids were received.

June 3, 1955. Bulletin posted for permanent opening in position of Assistant Maintainer, New Haven Division.

June 10, 1955. Claimant Connor gave written notice to the Signal Supervisor of his desire to forfeit all Boston Division seniority rights and accept permanent employment on the New Haven Division. The Carrier complied with this request and at the same time, added Connor's name to the New Haven Division roster with a June 10 seniority date.

June 27, 1955. Assistant Maintainer position awarded to Connor on permanent basis and seniority date of June 27 established.

The Brotherhood maintains that Connor's seniority dates on the New Haven Division should be (1) January 24, 1955 for the position of Signal Helper, and (2) February 24, 1955 for the position of Assistant Signalman Maintainer (rather than June 10 and June 27, respectively, as assigned by the Carrier). In their arguments the parties have referred to Rules 36, 48, 28, 31 and 35 of the Agreement.

Connor was offered a Signal Helper's job on the New Haven Division in accordance with the provisions of Rule 36. That meant he continued "to hold and accumulate seniority" in his "home seniority district" (Boston). Under Rule 31, moreover, he could not acquire seniority rights on the New

Haven Division since these rights, with certain exceptions which are not relevant here, "are confined to one seniority district." In other words, if Connor wanted to retain his right to be recalled to "reasonably continuous employment" in his home district, he could not, under the Agreement, simultaneously acquire a second set of seniority rights in another district.

The same principle applied to Connor's February 24 assignment to Assistant Signalman. While it is true that this temporary position was bulletined, there is no convincing evidence that, as The Brotherhood claims, Connor was promoted to fill it in accordance with the terms of Rule 48. In fact, it appears that the Claimant never bid for this job and it was given to him under Rule 36 which provides "opportunity for employment on advertised vacancies in other seniority districts in preference to the employment of new men . . ." Additionally, Connor was not eligible for promotion on the New Haven Division since (1) under Rule 48, "employees are entitled to promotion to positions covered by this agreement only on the district over which their seniority prevails," and (2) Connor's seniority, in February, prevailed in the Boston district and nowhere else.

What of the June occurrences? It is significant in our judgment, that (1) Rule 31 limits accumulation of seniority rights to one district, (2) Rule 28 provides that "seniority begins at the time an employee's pay starts in the seniority class in which employed after being assigned to a bulletined position (either permanent or temporary) in accordance with Rule 53 . . .", and (3) Connor maintained Boston District seniority rights until June 10. There is no valid basis under the Agreement, therefore, to grant the Claimant New Haven District seniority prior to June 10, since to do so would, in effect, accord his simultaneous seniority in two districts. We can find nothing in the agreement to warrant such a holding.

The Brotherhood argues, in effect, that Connor's seniority in the New Haven Division should be made retroactive to a time prior to his relinquishing seniority rights in another division. (In this sense the claim differs from that set forth in Docket Number SG-9874 where the claimant wanted the benefit of seniority rights on one division despite his failure to relinquish such rights on another). But we can find nothing in the Agreement to support such a principle. Significantly, the parties in dealing with situations of permanent transfers between divisions, have made no provision for such retroactive seniority. Rule 48 states in relevant part:

"An employee accepting permanent transfer from one seniority district to another under this rule will rank as a new employee on the district to which transferred, and will forfeit all seniority on the district from which transferred."

Since the Agreement does not sustain the Brotherhood's contention, and it is beyond our authority to establish new rules, the claim will be denied. (See Award 1792).

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: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 20th day of December 1961.