



Award No. 16545

Docket No. MS-16440

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

John H. Dorsey, Referee

PARTIES TO DISPUTE:

FOREST H. HENDRICKS

**THE CHESAPEAKE AND OHIO RAILWAY COMPANY
(Chesapeake District)**

STATEMENT OF CLAIM:

1. A. Protest that my name, Forest H. Hendricks, was improperly removed from the seniority roster of Group One Clerks, Transportation Department, Huntington Division, Huntington District, when that roster was reissued on July 1, 1965; and

B. Request that my name be promptly restored to that roster in its proper place in accord with my seniority standing on the previous rosters.

2. A. Protest that my name, Forest H. Hendricks, was improperly removed from the seniority roster of Group Two Clerks, Special Agents Department, Huntington District, when that roster was reissued on July 1, 1965; and

B. Request that my name be promptly restored to that roster in its proper place in accord with my seniority standing on the previous rosters.

OPINION OF BOARD: The record shows that Claimant had established Group 2 seniority under the applicable agreement as of April 28, 1943. He established Group 1 seniority as of November 21, 1944. On December 1, 1956, he was appointed to position of Special Officer, a position outside the scope of the Clerical Agreement. His name was carried on subsequent seniority rosters for clerical employees until June 1, 1965, when it was removed therefrom by the Carrier. The removal of Claimant's name from the Group 1 and Group 2 seniority rosters resulted in the protest and request as set out in the Statement of Claim.

The Carrier maintains that Claimant's name was continued on the clerical seniority rosters after his appointment to position of Special Officer through error until June 1, 1965, when it was removed, and that no rule of the Agreement provides for the retention of seniority by clerical employees when appointed to positions of Special Officers. It maintains Special Officer positions are not official or excepted positions as referred to in Rule 1(f) of

the Agreement; that there was no misunderstanding between the General Chairman representing the clerical employes and the Assistant Vice President-Labor Relations regarding whether or not the positions of Special Officers were official positions at the time Claimant was appointed to such position; and that whenever any question has arisen as to whether or not a clerical employe retains his clerical seniority when appointed to position of Special Officer, it has always been ruled that he does not retain his seniority rights unless covered by leave of absence, which contention is substantiated by copies of letters from the Carrier's files going back to 1942, that have been made a part of the record herein.

The Claimant contends that when he was appointed to Special Officer on December 1, 1956, he was informed orally by the then Division Chairman of the Clerks' Organization that his seniority would be protected while working as Special Officer. He also cites Rule 26 - Seniority Rosters, and Rule 22 - Non-Schedule Positions.

Rule 22, by its clear wording, has no application. Neither does the fact that Special Officer positions are not covered by any other agreement on this Carrier have any bearing.

The issue is whether Claimant had a contractual right to be retained on the seniority rosters covering clerical positions after being appointed to position of Special Officer. There is no rule in the Agreement providing such right. Seniority rights, if any, are created by the employment agreement. The seniority roster itself does not create nor confer seniority. We find and hold that the time limitations set forth in Rule 26 - Seniority Rosters - are applicable only to persons properly includable on the rosters.

Finding no contractual right to the retention of seniority by the Claimant after being appointed to position of Special Officer, there was no violation of the Agreement by the removal of his name from the seniority roster, and the claim will be denied.

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 Employee 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 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 2nd day of August 1968.

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