

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 23282
Docket Number MW-23317

Paul C. Carter, 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 Agreement when it failed to assign L. C. Arnold to the position of machine operator helper on BDC 22 beginning June 29, 1978 but assigned J. J. Boyd thereto (Carrier's File S 310-274).

(2) Claimant L. C. Arnold shall be allowed the difference in what he received as a trackman and what he should receive at the machine operator helper's rate of pay beginning June 29, 1978 and continuing as long as J. J. Boyd is the occupant of the position referred to in Part (1) hereof.

(3) Claimant L. C. Arnold shall also be allowed expenses equal to those paid to J. J. Boyd during the claim period."

OPINION OF BOARD: This docket involves the seniority of the claimant as a machine helper.

The record shows that claimant Arnold entered the Carrier's service as a trackman on November 4, 1968. He was assigned as a machine operator on September 28, 1971. He has been carried on the seniority rosters with those seniority datings as a machine operator and as trackman. The Agreement in effect at the time claimant was originally assigned as a machine operator did not provide for the establishment of seniority as helper when assigned as a machine operator. Rule 1(b) of the Agreement in effect in 1971, when claimant was assigned as machine operator, which Agreement was effective January 1, 1963, provided:

"(b) Men temporarily employed or employees promoted to a position of higher rank shall not establish a seniority date until assigned thereto following bulletin of vacancy as provided in Rule 11."

Rule 1(b) of the current Agreement, which became effective April 1, 1975 provides:

"(b) Men employed or employees promoted to a higher rank shall not establish a seniority date until assigned thereto following bulletining of vacancy as provided in Rule 11. The seniority date established for the newly hired employee pursuant to the provisions of this paragraph shall apply to all lower ranks of the same class."

The Board finds that when the rule was changed, effective April 1, 1975, claimant should have been given a seniority date as helper as of that date. The argument that the rule only applied to newly hired employees, and not to employees who had been in Carrier's service for some time, is not persuasive. We do not believe that it was the intent of the parties that newly hired employees would be treated more favorably than employees who may have been in Carrier's service for some time.

The Board is also not in agreement that because claimant did not protest the seniority rosters over the years, he forfeited seniority to which he may have been entitled to under the Agreement. As stated in early Award 3625:

"....In any case a seniority roster is but the evidence of an employee's seniority. The roster does not create nor confer seniority, it is but a formal recognition of the existence of seniority. And the inadvertent or improper leaving of an employee's name off a roster does not destroy seniority. That valuable property right is not dependent upon the whim or caprice of a scrivener."

See also Awards 5520 and 7586, the latter involving the same parties as herein, where the Board held:

"....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 employee is entitled. Rule 4(c) (roster protest rule) must be considered not alone, but in conjunction with other Agreement rules. In this case, the means by which employees 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 employee seniority rights to which he is entitled under Rules 1 and 2, or to give any employee seniority rights which he has not earned under those rules; rather, it is intended to support him in the assertion of his proper rights...."

Based upon the entire record, we find that claimant Arnold is entitled to a seniority date of April 1, 1975, as helper. The record shows that J. J. Boyd, whom claimant desired to displace, has a seniority date as helper of January 23, 1975. It follows, therefore, that claimant could not properly displace J. J. Boyd as a helper.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

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 Agreement was violated to the extent shown in Opinion.

A W A R D

Claim disposed of in accordance with Opinion .

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST:

A.W. Paulsen
Executive Secretary

Dated at Chicago, Illinois, this 15th day of May 1981.