

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25218
Docket Number MS-25285

Edward L. Suntrup, Referee

(Walter F. Kinns, Jr.

PARTIES TO DISPUTE: (

(Consolidated Rail Corporation

STATEMENT OF CLAIM:

"I am filing an appeal to your office on a decision made April 8, 1983 by G. F. Bent, Senior Director, Conrail Labor Relations Board.

I was hired by Erie Lacawanna Div. of Conrail 7/12/76, on the understanding that I was classified as a carpenter. I worked through my probation period, paid as a helper. On Nov. 4, 1976, a protest was filed on Andrew Kachmarik by nine other men including myself, part of this petition is enclosed. In this petition I protested the fact that he and J. C. Royce were being placed ahead of me as a carpenter. Nothing was done about this protest. On 3/18/76, an official roster was posted, on that roster I held the position as carpenter, but J. C. Royce who was hired after me was paid as a carpenter. I filed a protest but nothing was ever done about it. I was paid as a helper and worked under protest, as I stated in my appeal to G. F. Bent. I was laid off Aug. of 77, and not called back until April of 1982 according to my 1976 date as carpenter. I was laid off again on Jan 10, 1983, because of a protest allegedly filed against my 1976 carpenter date on the roster. I was told that this protest was filed on 3/23/82, by J. Flemming, one week before he was called back, and three weeks before I was called back. I have on numerous occasions requested a copy or proof of this protest or any other protest filed, but have been denied them. Enclosed are copies of letters that I have received and sent out in the process of my appeals. I have been told that this is the final appeal that I can make within the railroad system, which I must do before I can take legal action either on my own or through federal agencies, which I intend to do.

I feel that their (sic) has been some unfair labor practices committed and that I have been discriminated against, also I cannot exercise my 1976 helpers date, because sometime after my 1977 lay off, they upgraded helpers to mechanics, and no longer carry any helpers. I was not notified, even though I checked with places and people. I feel that under the circumstances that prevail that I should either maintain my 7/12/76 date, or should be given a date of 11/76, or 3/77, because of the protests that I filed. As I have noted on my applications and payroll record, their (sic) have been changes made. Also, when it is in the companies favor records are available, but any protest or record on my behalf cannot be found or located. I have made trips to Newark and to Philadelphia to Hearings at my own expense trying to seek a fair and reasonable roster date and solution. I have not been given any consideration in this matter whatsoever. One of these so called decisions was made and sent out the same day of the hearing, the other within three days. I know this case and believe it to be cut and dried to meet their own specification. I have been given a 7/12/76 date as a carpenter on all rosters from 1977 to 1982, and still maintain the date on the new dovetailed Conrail roster as of March 1, 1983,

"and there are still men working with a date behind me. I believe that with all the documented evidence that I have presented that there should be some reasonable solution to my case. I also understand that your office is the last and final appeal I have to make within the railroad system, please advise me if this is so? I fully intend to continue my case through other means if I cannot receive a satisfactory solution from your office, even if it means taking legal action, for I know that there is a lot more evidence that will strengthen my case that I do not have the authority to obtain on my own. If there are any notations or documents that are not fully understood, you can reach me by calling 717 823 7677. I am requesting an immediate reply or acknowledgement of this letter, as soon as you make a decision. Thank you. Walter F. Kinns, 43 E. Saylor Ave RD10 WD, PA. 823-7677"

OPINION OF BOARD: The instant case centers on the claim by Mr. W. F. Kinns, Jr. of Wilkes Barre, Pennsylvania that his Mechanic's B&B Forces seniority date be July 12, 1976, rather than April 12, 1982.

The Claimant was first hired by the former Erie Lackawanna Railroad on July 12, 1976, as a Carpenter-Helper. He worked this position, under ICC classification 034, until he was furloughed in August of 1977. During that time he was paid at the Carpenter-Helper rate.

When a new Conrail B&B roster was prepared incident to the adoption by the Organization and the Carrier of a new Agreement effective February 1, 1982, the Claimant was listed in that roster with a Mechanic's date of July 12, 1976.

In July of 1983, it was determined by the Vice General Chairman of the Organization and the Supervisor of Structures of the Carrier that an error had been made and the roster was revised to show the Claimant with a B&B Mechanic's seniority date of April 12, 1982.

As moving party it is incumbent upon the Claimant to show, by means of substantial evidence, that the claim be sustained. What is clear to the Board from the record is that an honest mistake was made when the new roster was prepared prior to the 1982 Agreement. This Board cannot sustain a seniority claim, however, on the basis of a scribe's error. Such claim as the instant one can only be sustained on substantial evidence showing that the Claimant worked in the class in question, and received the wage rate of that class prior to April 12, 1982. And no such evidence is present in the record. Further, the Claimant contends that he was told in 1976, that he was hired as a Carpenter. Again, nowhere in the record is it established that the Claimant ever worked in the class nor received the rate of pay of that class prior to April 12, 1982. On the basis of record evidence this claim cannot be sustained.

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

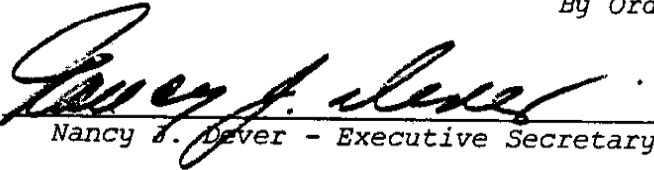
That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.